

FST FA04-0201276S : SUPERIOR COURT  
NOWACKI, SUZANNE : JUDICIAL DISTRICT  
VS. : STAMFORD, CONNECTICUT  
NOWACKI, MICHAEL : SEPTEMBER 24, 2009

B E F O R E:

HONORABLE STANELY NOVACK, JUDGE

A P P E A R A N C E S:

REPRESENTING THE PLAINTIFF:

ATTORNEY KEVIN COLLINS

SELF-REPRESENTING DEFENDANT:

MR. MICHAEL NOWACKI

Deirdre Clement  
Court Recording Monitor

1 MR. COLLINS: Good morning, Your Honor.

2 THE COURT: Good morning. We're all set if you  
3 folks want to get setup.

4 MR. COLLINS: Thank you, Your Honor.

5 THE COURT: Good morning. On the Nowacki case  
6 the record should indicated that Mr. Nowacki is  
7 present, Ms. Sullivan is present and her counsel is  
8 present. And as soon as you're ready we'll resume.

9 MR. COLLINS: Yes, Your Honor. We're on Mr.  
10 Nowacki's case, but I was going to request that we  
11 could take a witness out of order?

12 THE COURT: One of your witnesses?

13 MR. COLLINS: Yes, Your Honor. I got Mr. Colin  
14 here today.

15 MR. NOWACKI: Your Honor, may I address a couple  
16 of subjects before we get to that one?

17 THE COURT: Sure.

18 MR. NOWACKI: First of all, it seemed as though  
19 upon review of the transcript that I received a copy  
20 of this morning and it's uncertified at this point in  
21 time, because it's not a complete copy of the  
22 transcript.

23 Your Honor I thought established that we were  
24 going to focus at the last hearing on the motions for  
25 modification only.

26 THE COURT: Correct.

27 MR. NOWACKI: And the line of questioning that

1 Attorney Collins then got into in the back half of  
2 the hearing last week, he was addressing issues  
3 relating to contempt.

4 THE COURT: Can --

5 MR. NOWACKI: Of the payment of certain items in  
6 the financial agreement for the expenses. And his  
7 focus on the back half entirely related to issues  
8 relating to the compliance with the expense document.  
9 Which really related to the contempt motion that he  
10 filed, not to the motion for modification which is  
11 income driven.

12 And that in doing so he moved the discussion  
13 into an improper order in my opinion of what needs to  
14 be addressed. And provided that Attorney Collins is  
15 in agreement, I am more than happy to agree to let  
16 Attorney Colin not to have sit here while he then  
17 proceeds with that motion. If Your Honor says that  
18 is an appropriate thing for him to do, then I'm going  
19 to request that he finish that dialogue and allow me  
20 to have my redirect before Attorney Colin comes in in  
21 a different order. And I'm more than happy to  
22 accommodate the attorney's request providing that we  
23 keep things on point on the motion for modification  
24 when we resume.

25 THE COURT: You want to say something?

26 MR. COLLINS: Well, Your Honor, I actually was  
27 of the impression that we were doing everything on

1           moss(ph) that's what I thought. So I could be wrong  
2           on that.

3           Mr. Nowacki has a motion for modification which  
4           is, I don't know, 20 pages long. It certainly brings  
5           in a lot of narrative about what he thinks has been  
6           down wrong. I think it makes allegations that I  
7           think need to be refuted by us.

8           He's got a motion for contempt pending that's  
9           equally long. As I mentioned the last time we were  
10          here, it's sort of what I would call a speaking  
11          motion.

12          But there are many many things Mr. Nowacki's  
13          motion for modification alone which require me to ask  
14          questions that I've asked. Even if we're not on the  
15          motion for contempt, which I thought we were, I think  
16          that -- I thought that -- I have to deal with what  
17          the allegations in Mr. Nowacki's motion for  
18          modification are.

19          So I don't know what Mr. Nowacki is saying.  
20          It's kind of an ex post facto objection, I suppose.  
21          I guess that's what this really amounts to. So, I  
22          mean, I don't know what else to say.

23          The condition of calling Mr. Colin out of order  
24          is if I agree with Mr. Nowacki's position that we're  
25          not doing the motion for contempt right now. That  
26          said, I don't think that what Mr. Colin has to  
27          testify to do has anything to do with contempt.

1           THE COURT: Okay. Look, let me just say this,  
2           wait a minute. My best recollection is this, when we  
3           started last week Mr. Nowacki suggested or requested,  
4           and I agreed with him, that we would stop suspend the  
5           hearing on motion for contempt and deal with the  
6           motion for modification and financial issues. So  
7           everything was supposed to be geared towards the  
8           motion for financial modification.

9           There was also an agreement that any evidence  
10          that came in one hearing or the other could be used  
11          in the other hearing. So if something came up on the  
12          motion for modification that touched on the motion  
13          for contempt that could be taken into consideration  
14          when we resumed the motion for contempt.

15          But we've got to really do this in an orderly  
16          basis. Here's what -- I recall what you're saying,  
17          Mr. Nowacki, and there was some questions that wasn't  
18          a true up and there was a certain percentage of nine  
19          ninety-nine and all that stuff which pertains, I  
20          suppose, to the contempt, possibly to the contempt  
21          aspect.

22          So to make a long story short, I think I'm going  
23          to agree with Mr. Nowacki that we should proceed and  
24          just zero in on the financial issues.

25          MR. COLLINS: I have no problem with that, Your  
26          Honor.

27          THE COURT: All right. And if Mr. Colin is not

1 going to address the motion for contempt, then we'll  
2 let you call him out of order as long as it's to do  
3 with financial issues.

4 MR. COLLINS: That's very good, Your Honor.

5 THE COURT: Is there anything else that you  
6 wanted to say?

7 MR. NOWACKI: No, Your Honor. Just on other  
8 thing in regards to the Court order from June 15.  
9 Judge Shay, and you can perhaps look at this at  
10 recess rather than address this right now, but I  
11 would like the Court to address it --

12 THE COURT: This was a June 15 order by him?

13 MR. NOWACKI: Yes. That related to the  
14 distributions from trust accounts, etc. That in the  
15 Court order the Judge, I believe, ordered that the  
16 2005 tax return be supplied going back to the time of  
17 the divorce. And that in 2005 Judge Shay accepted  
18 the notion that because we filed separately in 2005  
19 that there could have been a distribution that's not  
20 reflected on the tax returns, because what we  
21 discovered in the last tax returns, and we'll get to  
22 that --

23 THE COURT: So what is you want a copy of tax --

24 MR. NOWACKI: 2005 tax return.

25 MR. COLLINS: Your Honor, that's already been  
26 ruled upon. I defy Mr. Nowacki to show where in the  
27 transcript the Judge ordered that.

1 MR. NOWACKI: Okay. I will.

2 MR. COLLINS: Because he's made position before

3 --

4 THE COURT: Can we pass that for the time being  
5 and look into it a little later?

6 MR. NOWACKI: Yes, I would be more than happy,  
7 Your Honor. I just need a definition on that  
8 subject.

9 THE COURT: Well, during a -- I'll give you a  
10 chance to show Mr. Collins --

11 MR. NOWACKI: That's fine, Your Honor.

12 THE COURT: -- whatever you tell him.

13 MR. NOWACKI: That's fine, Your Honor.

14 THE COURT: All right. So I'm going to permit  
15 you to -- anything else that you wanted to say?

16 MR. NOWACKI: No, Your Honor.

17 THE COURT: All right. You want to call Mr.  
18 Colin?

19 MR. COLLINS: I would, Your Honor, please.

20 THE COURT: And the only other question that I  
21 have in regards to attorney client privilege from Mr.  
22 Colin in as much he was the divorce attorney for  
23 Suzanne Sullivan and was the attorney until he filed  
24 a motion to be excused from his duties.

25 THE COURT: He represented whom, I've forgotten?  
26 You?

27 MR. NOWACKI: Mr. Colin represented Suzanne

1 Nowacki.

2 THE COURT: Oh, okay.

3 MR. NOWACKI: And then Suzanne Sullivan.

4 THE COURT: Okay.

5 MR. NOWACKI: That on the subject of attorney  
6 client privilege in regards to his testimony.

7 THE COURT: Uh-huh.

8 MR. NOWACKI: Is it waived in its entirety?

9 MR. COLLINS: No. It's only waived to the  
10 extent that it's waived. I mean, he's going to  
11 testify to certain things. So we'll get to that when  
12 Mr. Nowacki cross-examines.

13 THE COURT: Yes. Let's take it step by step.

14 MR. NOWACKI: All right.

15 MR. COLLINS: It's a premature objection.

16 THE COURT: Yes. It probably is.

17 MR. NOWACKI: Thank you, Your Honor.

18 THE COURT: Okay. Swear him in.

19 (The testimony of Attorney Tom Colin was  
20 previously typed and delivered to Mr. Nowacki. The  
21 following is what occurred after Mr. Colin's  
22 testimony.)  
23



1     S U Z A N N E     S U L L I V A N,

2                     Having been previously duly sworn testified  
3     further as follows:

4                     THE COURT:   You don't have to been sworn again.  
5                     You're still under oath.   But would mind just  
6     repeating your name and address for the record again.

7                     MRS. SULLIVAN:   Sure.   Suzanne Sullivan, 183  
8     Brushy Ridge Road, New Canaan, Connecticut.

9                     THE COURT:   Okay, Mr. Nowacki.

10    REDIRECT EXAMINATION BY MR. NOWACKI:

11         Q     Attached to the separation agreement there was an  
12     asset summary; is that correct?

13         A     Yes.

14                     MR. NOWACKI:   I'd like to --

15                     MR. COLLINS:   It's part of the separation  
16     agreement.

17                     MR. NOWACKI:   Okay.

18                     MR. COLLINS:   It's already part of the court  
19     file.

20                     MR. NOWACKI:   I'm going to give her a copy.

21                     MR. COLLINS:   Sure.   I get one copy.

22                     MR. NOWACKI:   I'll give her my copy to use as a  
23     reference.

24                     THE COURT:   You know it would be easier if we  
25     marked it.

26                     MR. COLLINS:   Your Honor, I don't object.

27                     THE COURT:   Well, why don't you mark it.

1           Because then we have to pull it out of the file and  
2           everything else.

3           MR. COLLINS: That's fine, Your Honor.

4           THE COURT: If you have an extra one to make a  
5           copy of -- to make an exhibit?

6           MR. NOWACKI: I have lots of copies, Your Honor.

7           THE COURT: If you have lots of copies I'll take  
8           an extra one.

9           MR. NOWACKI: Well, I got the original  
10          (indiscernible) file which I'll hold on to.

11          THE COURT: Yes. That's all right. Just mark  
12          the copy. It's easier than pulling it out of the  
13          file. So it will be the next number.

14          THE CLERK: Sixteen.

15          MR. NOWACKI: Well, I'm not sure that this is  
16          the full set.

17          THE COURT: Well, if you don't then it's okay.  
18          Was it just the last page that you wanted?

19          MR. NOWACKI: Yes. Yes, it was.

20          THE COURT: All right.

21          MR. COLLINS: Just to make sure that we're  
22          talking about the same thing, Your Honor. I'm  
23          looking at something called Schedule A it's appended  
24          to my fully executed copy of the separation agreement  
25          and it deals to my eye only with stock options. That  
26          I don't see.

27          MR. NOWACKI: Okay. So let's mark this as an

1 exhibit.

2 MR. COLLINS: Well, I don't know what it is.

3 MR. NOWACKI: Okay. It's an asset summary that  
4 was exchanged between the two lawyers.

5 MR. COLLINS: No, I disagree with that, Your  
6 Honor. No, I don't agree that that should be --  
7 that's not, that's not attached to any document. The  
8 affidavits speaks for themselves. They list  
9 presumably all of the assets of the parties.

10 So I don't know what the purpose of a  
11 compilation -- I don't know who prepared it, but it's  
12 not part of the separation agreement. I thought we  
13 were talking about the Schedule A.

14 THE COURT: Yes, I thought so too.

15 MR. NOWACKI: All right. Well, I may be  
16 mistaken that this may not have been attached. But  
17 it was a matter that was turned over to counsel as  
18 part of the production that was given to him.

19 MR. COLLINS: Well, that's all well and good.  
20 It's make it admissible.

21 THE COURT: No, that's a different issue. I've  
22 got the separation agreement here. It doesn't seem  
23 to be anything --

24 MR. NOWACKI: No --

25 MR. COLLINS: Other than a Schedule A relative  
26 to stock options I see no other listing on any sort  
27 of a roster of assets, so I do object. That's what I

1 thought he was referring to.

2 THE COURT: Well, wait a minute. Let me just  
3 look again. We've got a Schedule B; right? Because  
4 that's the, the specific items.

5 MR. COLLINS: Schedule B, Schedule B is the  
6 items for which the 65/35 applies.

7 THE COURT: Well, why would we have a Schedule B  
8 and not a Schedule A?

9 MR. COLLINS: We do have a Schedule A.

10 THE COURT: Is that the stock options?

11 MR. COLLINS: Yes.

12 THE COURT: Oh, I see Schedule A stock options,  
13 with small type; is that right? And Schedule B.  
14 That's all that seems to be in the file, Mr. Nowacki.

15 MR. NOWACKI: Okay.

16 THE COURT: There's a stipulation re: Custody  
17 and Parenting time.

18 MR. NOWACKI: All right. And, Your Honor, this  
19 document was sent to opposing counsel as part of  
20 production.

21 MR. COLLINS: That doesn't matter. He can send  
22 me a ham sandwich, it doesn't mean it's admissible.  
23 I mean, the bottom line is I don't agree that it gets  
24 admitted. There's no foundation for this document.

25 THE COURT: It's sustained. We'll mark it for  
26 identification. Which means it's not part of the  
27 evidence, but it's part of the file, maybe you can

1 connect it up later in some way.

2 But what you're purporting to offer is the  
3 summary of the result of the separation agreement?

4 MR. NOWACKI: That's correct.

5 THE COURT: So mark it for identification. You  
6 know, which raises a point that I was going to raise.  
7 I got in the file the financial affidavits of the  
8 parties at the time of trial which ended up in a  
9 settlement. But I don't have a financial affidavit  
10 of the parties as a result of the trial in June of  
11 '05 which shows a distribution of assets.

12 I think there's Appellate Court cases that say  
13 that's the one I got to compare against now once I  
14 get to the question of modification.

15 You looked confused, Mr. Collins?

16 MR. COLLINS: I am, Your Honor. The parties  
17 were divorced in June of '05.

18 THE COURT: Mark that for identification. Go  
19 ahead.

20 (Exhibit 16, was marked for identification  
21 only.)

22 MR. COLLINS: The parties were divorced in June  
23 of '05, is Your Honor, and I apologize --

24 THE COURT: Here's what I'm getting at.

25 MR. COLLINS: Is Your Honor suggestion that  
26 there are no June '05 affidavits in the file?

27 THE COURT: No. There are June of '05

1           affidavits. But as a result of the trial mister got  
2           the house and gave misses money, and she kept her  
3           51,917. The division of assets, when you read the  
4           separation agreement it shows how the assets were  
5           divided.

6           MR. COLLINS: Yes.

7           THE COURT: And as a result of that each party  
8           walked out of that divorce with a different asset  
9           situation than --

10          MR. COLLINS: Yes.

11          THE COURT: Well, that's what I'm saying.

12          MR. COLLINS: Yes.

13          THE COURT: And that's what I think the Court  
14          has to compare if it gets to the point of making a  
15          modification, there's a factor, right, there are  
16          estates, assets, and so forth. I think there's case  
17          law that says that. But you can look it up, if you  
18          like.

19          MR. COLLINS: No, I take Your Honor's word on  
20          that.

21          THE COURT: The point is, so I've interpolated  
22          myself from my own work papers what the financial  
23          affidavit would be after the assets were divided.  
24          That's all.

25          MR. NOWACKI: And marking --

26          THE COURT: And this, I assume, is going to show  
27          the same thing I suppose.

1 Does it show -- well, I can't ask you because  
2 it's not in evidence. But is there a dispute that  
3 there was a 60/40 division of assets? Is there a  
4 dispute about that?

5 MR. COLLINS: I don't have a dispute or an  
6 agreement in that regard.

7 THE COURT: Well, that's a fact. That's just  
8 fact.

9 MR. COLLINS: Right. I mean, to me the  
10 separation agreement tells how everything was to be  
11 divided and the financial affidavits tell what there  
12 was to be divided pursuant to the separation  
13 agreement.

14 THE COURT: That's correct.

15 MR. COLLINS: And so, you know, whatever it is  
16 that Mr. Nowacki is proffering here, I don't know  
17 from information that's derived.

18 But I don't -- in other words, when he said it  
19 was part of the separation agreement, I had no  
20 objection in a sense because it was already part of  
21 the... But it's not part of anything.

22 THE COURT: No, no. I sustained your objection.

23 MR. COLLINS: No, I know that. But what I'm  
24 saying is is there any dispute that it was divided  
25 60/40, I would say not.

26 THE COURT: Well, what are we arguing about?  
27 Because you put on evidence today to show there was a

1 concession by your client, she said so last time.

2 MR. COLLINS: Yes.

3 THE COURT: That means she didn't get 50/50.

4 MR. COLLINS: That's true. Yes.

5 THE COURT: Okay.

6 MR. COLLINS: Yes.

7 THE COURT: And if you do the arithmetic, I  
8 don't think anybody will dispute it, it came out to  
9 60/40.

10 MR. COLLINS: I would agree with that, Your  
11 Honor.

12 THE COURT: And that's what I think you were  
13 going to show on that exhibit.

14 MR. NOWACKI: And that's what the document  
15 represents, Your Honor. With the exception of, you  
16 know, things like the cost of clothing.

17 THE COURT: Yes. Yes.

18 MR. NOWACKI: And all those other debts I  
19 assumed at the end of the process including \$38,000  
20 worth attorney fees.

21 MR. COLLINS: I stipulate to -- I stipulate to  
22 60/40 asset distribution.

23 THE COURT: Fine. Let's move on. Whether it's  
24 60/40 or some other number let's move on.

25 BY MR. NOWACKI:

26 Q As part of the --

27 THE COURT: What did you say? You need to go



1 near a microphone.

2 MR. NOWACKI: I'm sorry.

3 BY MR. NOWACKI:

4 Q As part of the settlement, you became responsible for  
5 the children's custodial accounts that came from Neuberger  
6 and Burman; is that correct?

7 MR. NOWACKI: I'm going to object, Your Honor.  
8 It's beyond the scope of cross.

9 THE COURT: Yes. We didn't cover that before.  
10 But you're right. You had certain custodial accounts  
11 that she had. You were responsible for 529 and she's  
12 responsible for the others. And have to give  
13 accountings to each other and things of that sort.

14 BY MR. NOWACKI:

15 Q So it is part of the financial affidavit notations --

16 THE COURT: Sure.

17 BY MR. NOWACKI:

18 Q That are both current as well as noted on June 14  
19 which was the last one --

20 THE COURT: All right. So what's your point?

21 BY MR. NOWACKI:

22 Q And that's the content. And the context is in  
23 regards to the responsibilities for paying taxes on those  
24 accounts. Have you been paying and filing taxes on those  
25 accounts as part of your responsibility to hold those  
26 accounts?

27 MR. COLLINS: Your Honor, Mr. Nowacki raised the

1 issue at 10:25 or whenever it is that we started --

2 THE COURT: Sustained. It's got nothing to do  
3 with modification.

4 MR. COLLINS: Right.

5 THE COURT: Ask the next question.

6 MR. NOWACKI: Well, it has to do with  
7 accessibility to those assets. That's what I'm  
8 suggesting, Your Honor.

9 THE COURT: Well, that has nothing to do with  
10 modification. Aren't those accounts for the  
11 children?

12 MR. NOWACKI: Yes.

13 THE COURT: Okay. Go ahead ask the next  
14 question.

15 BY MR. NOWACKI:

16 Q In earlier testimony you suggested that you were not  
17 all satisfied with the agreement that you signed; is that  
18 correct?

19 A The question you asked me was whether I thought it  
20 was fair, and I said, no.

21 Q All right. And in the reading of the transcript from  
22 June 29, which was the day that you signed the agreement,  
23 you just heard questions that refute your contention that  
24 the agreement wasn't fair. You were asked that question;  
25 correct?

26 MR. COLLINS: Well, I'm going to object, Your  
27 Honor, because this is beyond the scope of cross.

1           THE COURT: You're arguing with the witness. I  
2           have to judge her testimony and her testimony when I  
3           get to it; right? And you've asked the question, and  
4           she's made the answer. Now you're trying to  
5           summarize and have her admit to something. She  
6           testified clearly on the record at the time of the  
7           divorce and today that at the time of the divorce she  
8           answered the questions as you indicated. Indicated  
9           no duress, it's fair, and all that. Which is  
10          different -- it's not completely different from what  
11          she said the other day, because what she said the  
12          other day was, she wanted to get rid of this problem,  
13          and so she made concessions that she really wasn't  
14          happy with. That's what she said. But to get the  
15          Court to stand in front of Judge and say, I don't  
16          really like this agreement. No Judge would approve  
17          it. That's where we are.

18                 Is that true or false?

19          MS. SULLIVAN: Absolutely true.

20          THE COURT: Isn't that so?

21          MR. NOWACKI: Well, I'm just trying to  
22          understand the inconsistency of what was said last  
23          Wednesday versus what said the day the agreement was  
24          signed. And what's in force is the agreement that  
25          was signed.

26                 THE COURT: No question about it.

27          MR. NOWACKI: Thank you, Your Honor.

1 THE COURT: You made your point.

2 MR. NOWACKI: Thank you.

3 THE COURT: I'm trying to urge you along --

4 MR. NOWACKI: No, I understand, but --

5 THE COURT: -- you make these points and I get  
6 it.

7 MR. NOWACKI: Okay. And I'm a little unclear  
8 about the process of --

9 THE COURT: No, you're doing fine. You're doing  
10 fine. If you went to law school --

11 MR. NOWACKI: All right. And I appreciate, you  
12 can move on now, as a queue that I will use.

13 THE COURT: Okay. I appreciate.

14 MR. NOWACKI: Thank you. I have no other  
15 questions, Your Honor.

16 THE COURT: I had a few questions. I don't  
17 remember -- if now is a proper time to ask them or  
18 not, but I'm going to ask them. If either one of you  
19 thinks that it's premature or not say so, and I'll  
20 defer it to later, okay. Because I haven't heard  
21 what mister has to testify to yet.

22 For example, we talked about the Schedule A  
23 expenses last time. For -- wait a minute, I want to  
24 make notes of yours answers to my questions.

25 For 2008 what were the total Schedule A expenses  
26 that you and your former husband had shared for the  
27 children?

1 MS. SULLIVAN: I don't know exactly, but it was  
2 around \$50,000 in total for the year.

3 THE COURT: Okay. 2008, \$50,000.

4 MR. NOWACKI: That is an incorrect number.

5 THE COURT: All right. When it's your turn --  
6 you know, on your memo you listed a whole bunch of  
7 that. But I'm going to let you tell me when it's  
8 your testimony.

9 MR. NOWACKI: I have each of the individual  
10 quarterly reconciliations to be part of my testimony.

11 THE COURT: All right. Okay. Well, you know,  
12 during a recess or between now and next session, if  
13 we don't finish today, Mr. Collins, you might look it  
14 over with mister --

15 MR. COLLINS: Sure, Your Honor.

16 THE COURT: Because, you know we're talking  
17 about a modification and whether there should be or  
18 not. A factor is how much we're talking about.

19 MR. COLLINS: Yes, Your Honor.

20 THE COURT: If it's \$10,000 a year, you know,  
21 65/35 is a different percentage than 50.

22 MR. COLLINS: Of course.

23 THE COURT: All right. So I'll pass that, and  
24 we'll deal with that some other time.

25 Now, you said this the last time, and my notes  
26 are a little fuzzy on it so I may be repeating it.  
27 I'm looking as Schedule B, and, for example, one is

1 school meals and camp lunches there were real  
2 disputes about that about sharing that?

3 MS. SULLIVAN: Correct.

4 THE COURT: Right. That's what I think you said  
5 last time.

6 Two was cost for camps-sports equipment, special  
7 lessons, instructional lessons. Were there any  
8 problems about that?

9 MS. SULLIVAN: Only recently.

10 THE COURT: Only recently?

11 MS. SULLIVAN: Yes.

12 THE COURT: Okay. Then most of the rest are  
13 about the Nanny?

14 MS. SULLIVAN: Yes.

15 THE COURT: Okay. I think I'll stop there, and  
16 if I have other questions I can ask it later. Let me  
17 just check. All right. Thank you. You may step  
18 down.

19 MR. COLLINS: Thank you, Your Honor.

20 THE COURT: Mr. Nowacki, you want to testify  
21 next? You want somebody else to testify, whatever.  
22 You want to go next?

23 MR. NOWACKI: I think, on the financial issues?

24 THE COURT: Yes.

25 MR. NOWACKI: If I might have two minutes to get  
26 ready for that.

27 THE COURT: You want to take a recess, we can

1 resume at 2 o'clock?

2 MR. NOWACKI: That would be great.

3 THE COURT: Why don't you go to lunch.

4 MR. COLLINS: Thank you, Your Honor.

5 THE COURT: We'll resume at 2 o'clock.

6 MR. COLLINS: Yes, Your Honor.

7 MR. NOWACKI: Thank you.

8 THE COURT: This way it will give you a chance  
9 to prepare.

10 MR. NOWACKI: Thank you, Your Honor. I  
11 appreciate that.

12 (A luncheon recess was taken, and court was  
13 reconvened.)

14 THE COURT: Please be seated.

15 MR. COLLINS: Your Honor, would you like me to  
16 see if Mr. Nowacki is outside?

17 THE COURT: Here he comes.

18 MR. COLLINS: Okay.

19 THE COURT: All right. Mr. Nowacki, if you're  
20 ready and you want to testify, come on up.

21 MR. COLLINS: Your Honor, I was going to make a  
22 small request if we could adjourn at 4:30 by any  
23 chance. We have something going on at the office  
24 that I need to address. I didn't address that with  
25 Mr. Nowacki.

26 THE COURT: Fine. That's fine

27 MR. NOWACKI: That's fine. Your Honor, I did

1 want to address before I start my testimony the issue  
2 of the 2005 tax return in regards to --

3 THE COURT: All right. You want to talk about  
4 it, sure.

5 MR. NOWACKI: Yes, I'd like to do that before I  
6 get up. Because it does have a sequential --

7 THE COURT: Go ahead.

8 MR. NOWACKI: -- impression here that... And all  
9 I'm trying to do is I'm trying to validate the  
10 sequence of income that existed that led up to the  
11 65/35 percent --

12 THE COURT: Well, Mr. Collins said the Judge, I  
13 forgot who, dealt with it. Did he deal with that  
14 issue or she?

15 MR. COLLINS: He didn't, Your Honor. What  
16 mister -- I don't -- the sentence started off with a  
17 different topic than I think it ended up with. What  
18 I think Mr. Nowacki is saying is that in a hearing  
19 before Judge Shay on June 15, 2009, some three plus  
20 months ago, he ordered -- he ruled on my objections  
21 to request for production. He ordered that I should  
22 produce certain things and then he ordered that I  
23 didn't have to produce other things.

24 Mr. Nowacki, if I understand, thinks that Judge  
25 Shay ordered production of a tax return from 2005. I  
26 have the transcript. My recollection was that he  
27 didn't order it.



1           THE COURT: All right. So he didn't deal with  
2           it.

3           MR. COLLINS: Well, he did deal with it.

4           THE COURT: Go ahead.

5           MR. COLLINS: But he didn't order it. What he  
6           said was, and Mr. Nowacki wants to cite a different  
7           part of the transcript he certainly can. After some  
8           discussion I said, if Your Honor has ruled Your Honor  
9           has ruled. That's after some argument. I don't take  
10          serious exception to it. I understand the relevance.  
11          But I know this Court knows best. I have no  
12          problems. This is me. So if Your Honor thinks that  
13          three years '06, '07, '08 and year to, and then Judge  
14          Shay interjects, and year to date. And then I said,  
15          as long as Your Honor understands W2's have been  
16          provided. There's no objection to W2's having been  
17          provided.

18          So when I said '06, '07, and '08, and the Judge  
19          interjected, and year to date. That was his ruling  
20          on tax returns. And they got produced.

21          THE COURT: Well, let --

22          MR. NOWACKI: Well, Your Honor, there's also a  
23          second issue that relates to my request that Attorney  
24          Collins did not allow me to finish.

25          THE COURT: No. I interrupted you, but go  
26          ahead.

27          MR. NOWACKI: it has to do with a stipulation

1           that's in the agreement about an indemnification in a  
2           tax year. And in this particular case the tax year  
3           we were still married in 2005. At the end of the  
4           divorce a question was raised about whether or not we  
5           were going to file jointly or not. And that I was  
6           rejected in my request that we file year --

7           THE COURT: You couldn't file jointly in '05 if  
8           you got divorced in '05.

9           MR. NOWACKI: No, no, for the prior year.

10          THE COURT: For '04.

11          MR. NOWACKI: Right, for '04. And what happened  
12          was then '05 we, you know, we were going to have a  
13          separate issue, but this distribution had occurred on  
14          January 20, 2005. And inasmuch I was in possession  
15          of a document having not looked who the issuing bank  
16          was, and that I discovered this document in my files  
17          in 2009. And that I am at risk in this situation  
18          because I am aware that this document existed, and  
19          I've requested under section 10.1 of the separation  
20          agreement an indemnification on that 2005 year.

21          THE COURT: Did you get it?

22          MR. NOWACKI: And they're refusing to give me  
23          that.

24          THE COURT: I was wondering as part of the  
25          dissolution you didn't talk about it?

26          MR. NOWACKI: No. Because at that point in time  
27          this whole thing with the Swiss banks and all those

1           other issues were not really known to anyone. And  
2           that I requested on a number of occasions that  
3           Attorney Collins to provide me with indemnification,  
4           and he's refused to do so.

5           THE COURT: Well, the first question is, is it  
6           your position that you didn't ask or tell Judge Shay  
7           all this?

8           MR. NOWACKI: That was in the colloquy. I mean,  
9           it was referenced --

10          THE COURT: So you requested 2005, and Judge  
11          Shay ruled only 2006?

12          MR. NOWACKI: Well, it was in that area with a  
13          lot of the orders that I've seen up to this period of  
14          time, such as, we didn't get a specific date for the  
15          production. So, therefore, then we ended up having a  
16          continuance and another hearing. And, you know, the  
17          process here sometimes stands in the way of  
18          enforcement of the agreement.

19          And what I'm requesting is that, and I'm happy  
20          to accept a letter of indemnification in trade for  
21          the 2005 tax return.

22          THE COURT: Letter of indemnification as to what  
23          year?

24          MR. NOWACKI: 2005.

25          THE COURT: But you didn't file joint returns --

26          MR. NOWACKI: Right. But we were married in  
27          that year. And now I'm understanding that that

1 distribution has some issues attached to it. And I  
2 don't want to be held accountable for those issues  
3 because I did not file that tax return. And, in  
4 fact, if you'll notice on the June financial  
5 affidavit that was presented in court that day  
6 there's a handwritten notation on the 2000 -- the  
7 prior year return where there was an \$11,500 refund  
8 that was given. The day that we signed the agreement  
9 that was handwritten just as I'm ready to come in and  
10 sign the agreement it wasn't acknowledged. And this  
11 is just part of the pattern of behavior of the lack  
12 of disclosure. That's the issue here.

13 THE COURT: Well, let me ask you this, what  
14 relevance does that have to the issue before us on  
15 the motion for modification?

16 MR. NOWACKI: It really relates to the  
17 verification of income. This unknown source of  
18 foreign dividend income.

19 THE COURT: We've been through that before.

20 MR. NOWACKI: Right.

21 THE COURT: And I gave you the opportunity if it  
22 comes to light in the future that you can seek a  
23 further modification.

24 MR. NOWACKI: Right. I understand that. All I'm  
25 trying to do is separate my own personal risk here  
26 that I'm knowledgeable of a criminal activity in my  
27 opinion that I need to be exonerated from. And I

1           thought that section 10.1 of the agreement did so.  
2           And that may be part of the contempt motion to be  
3           heard later.

4           THE COURT: Well, didn't your -- well...

5           MR. NOWACKI: Because that is in the contempt  
6           motion.

7           THE COURT: Oh, it is?

8           MR. NOWACKI: Yes, it is.

9           THE COURT: All right.

10          MR. NOWACKI: But it still relates to the  
11          subject of income flow because there can be an  
12          argument made here --

13          THE COURT: Yes.

14          MR. NOWACKI: -- about, you know, income  
15          potential as part of your judgment.

16          THE COURT: Well, apparently there's a  
17          misunderstanding between you and Mr. Collins about  
18          the scope of what was brought before Judge Shay and  
19          what he ruled.

20          MR. COLLINS: Well, Your Honor, I --

21          THE COURT: Just hear me out, please.

22          MR. COLLINS: Yes, Your Honor. I apologize.

23          THE COURT: No, don't apologize.

24          I'm not in a position to rule on it today,  
25          number one. And number two, I don't think it's  
26          within the scope of the modification. If you want to  
27          go back for a clarification from somebody else, you

1           may do so if you like in the meantime. But I really  
2           don't think it's necessary in the frame work of what  
3           we're dealing with today.

4                     Second of all, you filed a complaint. The  
5           government knows what your position is. I doubt what  
6           the presumption would be that you are exonerated.

7                     MR. NOWACKI: I certainly made that application  
8           as part of the --

9                     THE COURT: Well, that's what I'm saying. Third  
10          of all, there's no indication that anybody is  
11          pointing the finger at you. If that happened you,  
12          certainly, would have a, you know, a stronger case  
13          for that return.

14                    MR. NOWACKI: Well, I'd like not to be back  
15          here.

16                    THE COURT: So really it's like a preemptive  
17          strike you want to make just to feel better

18                    MR. NOWACKI: I would sleep better, yeas.

19                    THE COURT: That's what I meant. I was going to  
20          say that.

21                    So come on up and we'll move along.

22                    THE COURT: Excuse me.

23                    (The hearing was interrupted to hear an  
24          unrelated matter, and then this hearing resumed.)  
25

1 M I C H A E L N O W A C K I,

2 Having been previously duly sworn testified further  
3 as follows:

4 THE COURT: Sir, you don't have to be sworn  
5 you're sworn, but would you mind just repeating your  
6 name and address for the record.

7 MR. NOWACKI: I'd be happy to be sworn,  
8 actually.

9 THE COURT: Well, you don't have. You'd feel  
10 happier?

11 MR. NOWACKI: Yes, I would like to.

12 THE COURT: Swear him in.

13 (Mr. Nowacki was duly resworn.)

14 MR. NOWACKI: Michael J. Nowacki, 319 Lost  
15 District Drive, New Canaan, CT 06840.

16 THE COURT: Did you drop something that you  
17 needed? You can get it.

18 Do you want say something or are just standing  
19 up to stretch?

20 MR. COLLINS: I do, Your Honor, thank you. Just  
21 because -- no, I'm not stretching. I just want to  
22 know what the ground rules are. I don't know if the  
23 Court prefers that Mr. Nowacki speak in narrative  
24 form and then I object if I think something -- I  
25 think there's a certain impracticality to him asking  
26 himself questions, although that would prove amusing.

27 THE COURT: I've had cases were that happened.

1           MR. COLLINS: I've had it also, Your Honor. And  
2           the other thing is that because -- there's a whole  
3           lot of stuff up there with that witness right now,  
4           and that would be improper for any witness a lot of  
5           documents. And that would be improper for any  
6           witness. So I just want to know what the ground  
7           rules are for this witness testifying.

8           THE COURT: It's funny I was going to raise that  
9           before you stood up. I would say it would probably  
10          be easier if you testified in narrative form. And  
11          you could stop him and object at any particular  
12          statement that he makes that you think is proper to  
13          object to.

14          The material you have there, if you need it as  
15          you go along to refer to refresh your recollection,  
16          you can refer to it. Other than that, you can't  
17          bring it out because it's not in evidence, you know.  
18          You understand that?

19          MR. NOWACKI: Okay. In other words, I cannot  
20          mark any evidence from this position?

21          THE COURT: Oh, sure you can. You can do that.

22          MR. NOWACKI: Right.

23          THE COURT: You can do that. If you do that  
24          first, then you can refer to it.

25          MR. COLLINS: But what should be clear is that  
26          mister, to my mind, Mr. Nowacki can't, like, testify  
27          by looking at a document and then testifying. He has



1 to set the stage --

2 THE COURT: You understand that?

3 MR. COLLINS: -- for the propriety of doing  
4 that.

5 MR. NOWACKI: I understand that.

6 THE COURT: Yes, okay. Thank you for your...

7 MR. COLLINS: Thank you, Your Honor.

8 THE COURT: All right. Go ahead.

9 MR. NOWACKI: Well, first of all I want to thank  
10 the Court for the opportunity here being given to me  
11 to represent myself.

12 I'd like to address first the reason why I'm  
13 representing myself, because I think it's very  
14 important that you understand that. You know, in  
15 order to achieve the final solution in this  
16 settlement, it was necessary for me to extend every  
17 financial resource that was available to me to make  
18 that settlement.

19 And what was particularly important to me on  
20 behalf of our children was preserving our home or the  
21 home that they had knew -- have known since birth as  
22 the place where they can always call home. And that  
23 it really motivated the nature of the settlement that  
24 was reached, is that I felt that was a very important  
25 thing for our children. And that it was a very  
26 sincere effort on my part at every point in time to  
27 allow that to be a place that would be always home

1           for them. And also a place that I knew was home, and  
2           a place that we would be able to share that together.

3           So a lot of what I'm going to talk about in  
4           regards to the structure of the agreement really  
5           relates to the reason why I'm here is I'm not here to  
6           represent myself. I'm really here to represent our  
7           children and what's in their best interest. And  
8           that, although an attorney has been appointed to  
9           represent those interests as well, I'm an advocate  
10          for my children today to ensure as well as my best  
11          effort along this way to make sure there would be no  
12          consequence to the best of my ability as a parent.  
13          To the economics that, unfortunately, make it very  
14          difficult for parents post divorce to live by  
15          themselves on one income. I've figured out a way to  
16          do that, and I've done so by a lot of personal  
17          sacrifice of cutting back on a lot of my personal  
18          activities to ensure that our children will not have  
19          their lives diminished by what's happened here. And  
20          that I am very sincere in my approach to all of the  
21          conversations here today because I do believe that  
22          the agreement that was structured was in the  
23          children's best interest and continues to be so to  
24          this day. And although we have disagreements  
25          periodically, I don't think that the disagreements  
26          that we have are terribly dissimilar to any  
27          disagreements that two parents living under the same

1           roof would have occasionally.

2                   And that the standard for the children was to  
3           ensure that their lives, primarily, in mind that was  
4           the standard, would remain unaffected by what  
5           happened. And that the reason why I'm here  
6           representing our children and their best interest, is  
7           that if I spent the \$100,000 that I would have  
8           estimated that has been spent by the opposing side  
9           defending my honor of living up to that agreement our  
10          children's college educations would be compromised.  
11          And Tim Nowacki's ambitions that he's worked very  
12          hard to achieve to go to Prep School would have been  
13          definitely affected. And that to me would be a  
14          tragedy. My objective in this whole procedure from  
15          the very beginning was to reach a fair and reasonable  
16          settlement that would also take the children's best  
17          interest at the very forefront of the discussion, and  
18          that might mean that the parents would be excluded at  
19          times from what they view their best interest to be.

20                   I cannot tell you how many times between March  
21          of 2008 and September 11, 2008, that I made an effort  
22          to reach out to Suzanne directly to provide financial  
23          documentation that would be completely transparent.  
24          And that I was rejected in those efforts. That  
25          disappointed me. Because I knew what would happen  
26          over the course of time is that the resources that  
27          are available to her through her family would attempt

1 me to crush me financially and cause me to  
2 capitulate. Not all of the attorney's fees that have  
3 been paid here have been paid by the plaintiff or her  
4 spouse in my opinion. I've asked for that  
5 documentation from Attorney Collins and he's not been  
6 willing to give that to me.

7 MR. COLLINS: Your Honor, I'm going to object at  
8 this point. If Mr. Nowacki --

9 THE COURT: You don't have. I think we've gone  
10 a little far afield.

11 MR. NOWACKI: Right. But the point here is that  
12 I was never going to be able to afford a defense.

13 They, basically, evaporated my bank accounts  
14 through the first divorce where I was forced to spend  
15 \$160,000 to defend my honor, and the honor of my  
16 children who deserve the very best in life. And  
17 they're not my children they're our children.

18 I understand that there was a lot of acrimony  
19 leading up to the agreement. And that acrimony  
20 really had to do with I had to what I needed to do to  
21 protect our children's home. That's what I did.

22 And I will share as part of my testimony from  
23 material from Tim who last year had to do a sort of a  
24 compendium of written documents about his life. And  
25 I want to share with the Court and with Suzanne, who  
26 has seen this, his feelings about what this home  
27 means to him. So in the context of Suzanne's

1 decision to seek a divorce, which she's entitle to do  
2 under the law, not necessarily under the law of God  
3 who I am also here to testify about. When you swear  
4 in, and the reason why I wanted to swear in, the last  
5 sentence is the most important sentence which is, so  
6 help me God.

7 I believe, both of us love our children. Does  
8 that we always put them above our own interest?  
9 Probably not. But I'm here today to put our  
10 children's interest first. And those are best  
11 preserved by what, I believe, was constructed in the  
12 original agreement. Which was an agreement that  
13 split the expenses based on income. And that income  
14 at that point in time, because I was following advice  
15 of counsel --

16 THE COURT: Was income defined in your  
17 separation agreement what the components of income  
18 were?

19 MR. NOWACKI: No, Your Honor. But I will give a  
20 detailed history here as part of my testimony as to  
21 what constituted that because I have it going all the  
22 way back to the beginning of the marriage.

23 THE COURT: Well, I've given you a lot of leeway  
24 for a lot of reasons. Not the least of which is  
25 you're not a lawyer and that you're representing  
26 yourself. And I'm convinced that you're sincerely  
27 saying the things that you're saying, okay. But it

1 really -- it's not the purpose of this hearing it's  
2 not to given you a forum to preach serum or to  
3 relitigate your divorce. You can't do that. This is  
4 not the time and place to do it. So you got to keep  
5 that in mind. I mean --

6 MR. NOWACKI: I'm ready to move forward.

7 THE COURT: I'm just saying, for example, the  
8 impact of the children I don't know what Tim thinks  
9 or says has got to do with the financial order of  
10 either ordering your wife to pay a greater percentage  
11 or lesser percentage of expenses.

12 MR. NOWACKI: Well, it does have to do with  
13 education, Your Honor.

14 THE COURT: Well, I think your wife -- your  
15 former wife said at the last hearing she's not  
16 opposed to the concept of Prep School. Is that  
17 correct, Mr. Collins?

18 MR. COLLINS: Absolutely, Your Honor.

19 THE COURT: So, you know, I have cases where the  
20 parents disagree about Prep School. So both parents  
21 here are, from what I hear so far, are concerned  
22 about educating their kids, okay. So what I'm trying  
23 to stay is try to stick to the information that's  
24 need for me to make an informed decision on whether  
25 or not your wife should contribute -- your former  
26 wife should contribute more that 35 percent. That's  
27 the issue.

1           MR. NOWACKI: And I understand that, Your Honor.  
2           And the reason why I responded in the way that I did  
3           about certain assertions that have been made by the  
4           opposing attorney about my character along the way  
5           here. About what my motivation is here, I have no  
6           vindictiveness here.

7           THE COURT: All right.

8           MR. NOWACKI: All right. And I wanted to hear  
9           that --

10          THE COURT: Okay. That's why I've given you  
11          some leeway too because --

12          MR. NOWACKI: I wanted to clear that issue up,  
13          so that the Court is fully aware that the reason --

14          THE COURT: I accept that, okay.

15          MR. NOWACKI: -- that I'm here.

16          THE COURT: I accept that.

17          MR. NOWACKI: Thank you. All right.

18          THE COURT: Let's go on to --

19          MR. NOWACKI: So let's go on to the specifics of  
20          the structuring of the agreement.

21          Your Honor raised in the last the hearing a  
22          question about, how did you get to the 65/35?

23          THE COURT: Right.

24          MR. NOWACKI: So I'd like to address that very  
25          specifically, and also address the summary of the  
26          incomes on the information that I have that was made  
27          available to me.

1           THE COURT: Go ahead. Go ahead. That's all  
2 right. Unless Mr. Collins objects at some point  
3 we'll listen to you.

4           MR. COLLINS: Well, he is going to testify from  
5 documents, so.

6           MR. NOWACKI: I'm going to give you a copy of  
7 the documents, and we'll put them on the record.

8           MR. COLLINS: Well, that doesn't change anything  
9 they have to be admitted as evidence, so.

10          MR. NOWACKI: I understand. I'll hand them to  
11 you. If you want to come up and get them.

12          MR. COLLINS: Sure.

13          THE COURT: Unless you have to refresh your  
14 recollections you can give me approximates, you don't  
15 have to give me exacts.

16          MR. NOWACKI: No. I think that the long range  
17 history here is important.

18          THE COURT: I can't look at them until I hear  
19 whether he objects.

20          MR. NOWACKI: Okay. That's fine.

21          MR. COLLINS: Okay. Are you offering this as an  
22 exhibit, sir?

23          MR. NOWACKI: Yes, sir.

24          MR. COLLINS: Objection. It's irrelevant. It  
25 states income between, and this is the first time  
26 I've seen the document, 1992 attributable to Mr.  
27 Nowacki and the former Mrs. Nowacki through 2004. So



1 I don't know how that's germane. Simply put  
2 Borkowski. More simply put irrelevant.

3 THE COURT: You can't go back to the beginning  
4 of time. I don't want to tell you what to say or not  
5 to say, but give me your overview of why -- how you  
6 arrived at this percentage?

7 MR. NOWACKI: All right. In 2004, which is  
8 hopefully a reasonable reference point for us to  
9 agree upon.

10 THE COURT: All right. Go ahead.

11 MR. NOWACKI: That was leading up into the  
12 agreement in 2005. And on of the problems of not  
13 having the 2005 tax return is I can't address the  
14 year 2005.

15 MR. COLLINS: Well --

16 MR. NOWACKI: Because not all of the information  
17 of the distribution of income is available to me.

18 THE COURT: Because 2005 income --

19 MR. COLLINS: That's the year of the  
20 dissolution.

21 THE COURT: I know.

22 MR. COLLINS: The bench mark to my mind, and  
23 Your Honor can correct me if he thinks I'm wrong, the  
24 benchmark is the financial affidavit at the time of  
25 the date of dissolution. That's my view.

26 THE COURT: All right. He's just using that as  
27 a preamble. So go ahead. You started to say --

1 MR. NOWACKI: All right. In 2004 the W2 income  
2 --

3 MR. COLLINS: I object. I don't know -- this  
4 relitigating something which predates the decree of  
5 dissolution.

6 THE COURT: Yes. But don't forget he's trying  
7 to tell me -- I asked a question last time 65/35.

8 MR. COLLINS: Yes, Your Honor. Right.

9 THE COURT: And your client gave her answer.

10 MR. COLLINS: Yes.

11 THE COURT: And he's trying to give me his  
12 answer.

13 MR. COLLINS: But the problem that we face is  
14 that, is that it predates the decree by at least six  
15 months.

16 THE COURT: Yes. But I think -- well, I don't  
17 know where we're going yet to be honest with you.

18 MR. COLLINS: All right.

19 THE COURT: So I'm going to let it in and see  
20 where we are.

21 MR. COLLINS: Understood, Your Honor.

22 THE COURT: So 2004, what was it?

23 MR. NOWACKI: That the percentage it was  
24 173,312.

25 THE COURT: What's that?

26 MR. NOWACKI: The W2 income for Suzanne Nowacki.

27 THE COURT: For your wife, all right.

1 MR. NOWACKI: At that point in time.

2 THE COURT: So she made 173,000, and you made  
3 what?

4 MR. NOWACKI: Three thirty-one eight fifty-two.

5 THE COURT: All right.

6 MR. NOWACKI: So when you add those together  
7 that's a percentage of 34.5% excluding dividend  
8 income, car allowance, and other --

9 THE COURT: This is salary bonuses W2 income?

10 MR. NOWACKI: Yes, W2 income.

11 THE COURT: All right. You said 34 ½ so you  
12 would have 50...

13 MR. NOWACKI: Sixty-five.

14 THE COURT: Sixty-five and half. Okay.

15 MR. NOWACKI: But the number that I just gave  
16 you is just W2 it doesn't include dividend income and  
17 other kinds of things --

18 THE COURT: Well, that's what I said. That's  
19 what you said.

20 MR. NOWACKI: -- which would shoot that number  
21 up a little bit higher, so.

22 THE COURT: And that year you made two thirds of  
23 the income ballpark.

24 MR. NOWACKI: Correct.

25 THE COURT: All right. Go on.

26 MR. NOWACKI: And that basically was the  
27 structure of the agreement.

1           THE COURT: That's right. So that's what you're  
2 saying is it got to two thirds and one third.

3           MR. NOWACKI: And that's how we got to the  
4 college education. And that's how we got the  
5 insurance, and that's how we got to the --

6           THE COURT: Well --

7           MR. NOWACKI: -- other issues that were raised  
8 earlier last week.

9           THE COURT: Now, the financial affidavits that  
10 were filed by both you and your former wife carried  
11 that out, in that it showed that your gross was two  
12 to one over hers.

13          MR. NOWACKI: That's correct.

14          THE COURT: Okay. So you're saying that's how  
15 the two thirds one third came about.

16          MR. NOWACKI: Correct.

17          THE COURT: Okay. So let's go on from there.

18          MR. NOWACKI: Okay. And that was applied to the  
19 whole structure of the agreement then. The insurance  
20 --

21          THE COURT: Yes. Yes. Including unreimbursed  
22 medical expenses and everything.

23          MR. NOWACKI: Yes.

24          THE COURT: All right. Go ahead.

25          MR. COLLINS: And I would assume assets?

26          THE COURT: What do you mean assets?

27          MR. COLLINS: Well, he said the whole financial

1 structure of the agreement.

2 MR. NOWACKI: Well, I'll talk about --

3 MR. COLLINS: Which includes I --

4 THE COURT: Make a note of it and ask him on  
5 cross-examination.

6 MR. COLLINS: Okay.

7 MR. NOWACKI: All right. There's also a number  
8 of expenses that are on Schedule B that are included  
9 that are part of that which we decided by mutual  
10 agreement to not have in the agreement. The include  
11 things -- important issues, like, vacations,  
12 clothing, food.

13 THE COURT: But wasn't the understanding, I'm  
14 asking I don't really know that's why I'm asking  
15 because that was one of the questions that I was  
16 going to ask. But I thought it said some place in  
17 the agreement, but I don't remember if I'm thinking  
18 about your agreement or somebody else's, that while  
19 the children were with you you paid all the other  
20 expenses shelter, food, etc., and mother did the same  
21 thing.

22 MR. NOWACKI: Yes.

23 THE COURT: So did it expressly say that or is  
24 it by implication?

25 MR. NOWACKI: No. It's by inference of what's  
26 not in the agreement.

27 THE COURT: Right. Okay. So it's understood

1           that except for this very limited list and it's  
2           basically the Nanny, basically. You were responsible  
3           when the kids were with you and mother is... all right.

4           MR. NOWACKI: And we, basically, made the  
5           decision to not have the children feel like they were  
6           packing suitcases that they had two independent  
7           homes. And that, you know, what's important to  
8           recognize here on the subject of alimony as that  
9           subject was raised, is there was a six month, you  
10          know, prohibition against cohabitation at my request,  
11          that was also part of the parenting agreement.

12          THE COURT: Okay.

13          MR. NOWACKI: So in November 2005 one month or  
14          thereabouts after, I believe, Dave Barrington's  
15          divorce was final Suzanne Sullivan and Dave  
16          Barrington got engaged around Thanksgiving is my  
17          recollection. And they also purchased home at 183  
18          Brush Ridge Road for slightly over 1.4 million  
19          dollars.

20          THE COURT: All right.

21          MR. NOWACKI: So at that point in time then the  
22          residences, if you look at what the liquidation  
23          factor would have been on the residence my residence  
24          had I had to sell it, that there was no apparent harm  
25          by virtue of a purchase of a home of similar value by  
26          the pair.

27          THE COURT: All right. Okay.

1           MR. NOWACKI: And then addition to what the  
2           purchase price was there was also, according to one  
3           of the financial affidavits, a \$500,000 home equity  
4           loan that was also taken out on top of the \$980,000  
5           mortgage.

6           THE COURT: So what is your point about that?

7           MR. NOWACKI: To improve, to improve the home.

8           THE COURT: Okay.

9           MR. NOWACKI: So the home is not as it was  
10          purchased. And then in the year that --

11          THE COURT: You mean your home that you're  
12          living in?

13          MR. NOWACKI: No.

14          THE COURT: The home --

15          MR. NOWACKI: the 183 Brush Ridge Road  
16          residence.

17          THE COURT: Okay.

18          MR. NOWACKI: Then in addition to that in the  
19          year 2008 a significant other improvement was made to  
20          home in the addition to a swimming pool.

21          THE COURT: Okay.

22          MR. NOWACKI: So I don't see any weight to the  
23          argument that's been submitted to the Court that in  
24          some way shape or form that the agreement in some way  
25          shape or form disadvantaged the plaintiff in any way  
26          shape or form. And as a result our children weren't  
27          disadvantaged because they had two great homes.

1 THE COURT: Okay.

2 MR. COLLINS: Well, I'm going to object, Your  
3 Honor.

4 THE COURT: Lucky children, okay.

5 MR. COLLINS: Your Honor, I'm going object.

6 MR. NOWACKI: Yeah, they are. And I keep  
7 telling them that.

8 MR. COLLINS: That isn't what we proffered. Not  
9 that there was some disadvantaged.

10 THE COURT: No. I understand that. That's not  
11 a basis for modifying it one way or the other.

12 MR. COLLINS: Right, Your Honor.

13 THE COURT: So let's go on.

14 MR. NOWACKI: Okay. So, you know, it wasn't  
15 until which point in time we got to discovery that it  
16 was -- that I was able to analyze the financial  
17 affidavit that was submitted to the Court dated  
18 August 7.

19 THE COURT: What year?

20 MR. NOWACKI: Of 2009.

21 THE COURT: Okay.

22 MR. NOWACKI: There was a financial affidavit  
23 that was submitted by Tom Colin, who was here earlier  
24 this morning, in, I believe, October 29 was the date  
25 of that financial affidavit that was filed. That  
26 resulted in the only time we had a sit down to  
27 attempt to resolve matters in early November. And



1           that financial affidavit, as did the financial  
2           affidavit of August the...

3           THE COURT:   Seventh.

4           MR. NOWACKI:   Seventh.   Contained incomplete,  
5           inaccurate, and misleading information, which  
6           required me to apply for discovery on April 10 to the  
7           Court.   To which then on April 28 the day before we  
8           were supposed to have our first hearing with Your  
9           Honor, Mr. Collins objected to every single item in  
10          that...

11          THE COURT:   You're talking about the hearing  
12          before Judge Shay?

13          MR. NOWACKI:   No.   The one on April 28 when the  
14          first motion -- when he filed his objections to  
15          production, it came the day before we were supposed  
16          to have the first hearing on this case.

17          MR. COLLINS:   Your Honor, I think the record  
18          should reflect that the date of Mr. Nowacki's request  
19          was April 10.   Practice Book allows 30 days to reply  
20          or to object.   We objected within, I don't know, 17  
21          days.

22          THE COURT:   Well, be that as it may, that's  
23          historical things that has nothing to do with what  
24          we're talking about.

25          MR. NOWACKI:   Right.

26          THE COURT:   So let's move on.

27          MR. NOWACKI:   It gets to the point of it wasn't

1           until September 10, just six days before we had the  
2           hearing last week, that I received documentation on  
3           various portions of the financial affidavit that are  
4           not accurate.

5           THE COURT: Well, are you talking --

6           MR. COLLINS: Your Honor, let the record reflect  
7           that that's pursuant, not to mention the conclusory  
8           statement there, but that's pursuant to the order of  
9           Judge Malone. Judge Malone ruled that August, August  
10          13 to be exact that he entered a protective order.  
11          And the protective order holds that any documentation  
12          disclosed between Mr. Nowacki and my side, if you  
13          will, and our side and Mr. Nowacki would be held  
14          confidential by the recipient. And he ordered that  
15          be done by September 10 and, indeed, that's what was  
16          done.

17          THE COURT: All right. Let me ask you this,  
18          sir, so based on what you're telling me now is the  
19          August 7, '09, affidavit, which I have in front of  
20          me, and that's the operative one for your client;  
21          right?

22          MR. COLLINS: It is, Your Honor.

23          THE COURT: Yours is incorrect, do you want to  
24          point it out to me?

25          MR. NOWACKI: Yes.

26          THE COURT: Go ahead.

27          MR. NOWACKI: In the area of dividend income.

1           The foreign dividend income that has -- that is on  
2           the 2008 return, on the 2007 return, and 2006 return.

3           THE COURT:   Yes.   Is how much?

4           MR. NOWACKI:   Was nine thousand -- well, I can  
5           give you the dates by year.  1996[sic] the overseas  
6           amount was 9,917.  In 2007 that number went to  
7           11,866.  And then in 2008 that number is 9,259.  And  
8           when you look at the per month allocation on the  
9           financial affidavit you are looking at, which, Mr.  
10          Collins, I asked you earlier as to whether or not you  
11          had an additional copy?

12          MR. COLLINS:   I actually don't have one,  
13          actually.

14          MR. NOWACKI:   Okay.  That we can figure out that  
15          there was on the basis of what was declared on the  
16          financial affidavit, if Your Honor will just give me  
17          the number I can calculate randomly what that  
18          represented.

19          MR. COLLINS:   Well, I think it's thirteen  
20          thirty-eight per month.

21          MR. NOWACKI:   Thirteen thirty-eight.

22          MR. COLLINS:   Does, Your Honor, agree with that?

23          THE COURT:   What thirteen thirty-eight?

24          MR. COLLINS:   The dividends income under the  
25          income portion of my client's affidavit.

26          THE COURT:   That's what I'm trying to find.

27          MR. NOWACKI:   Right.  And then --

1 THE COURT: Oh, wait a minute --

2 MR. COLLINS: It's under additional information.

3 THE COURT: -- it's attached to the back. It's  
4 attached to the back.

5 MR. NOWACKI: And that would relate to just  
6 declaring the income on the Neuberger and Berman  
7 domestic account of 12,301.

8 THE COURT: Excuse me. That's 13,318 that's  
9 the number.

10 MR. NOWACKI: Right.

11 THE COURT: And that's on the Neuberger account  
12 which is the 12,000 -- or \$15,000 number.

13 MR. NOWACKI: Correct.

14 THE COURT: Fifteen thousand.

15 MR. NOWACKI: That's correct. In other words,  
16 if you add 12,301 and 3,237 that's what you come up  
17 with. So there was --

18 THE COURT: Twelve-O-one is the one you are  
19 claiming is not on the return or not on the --

20 MR. NOWACKI: The one that is not here in 2008  
21 was 9,259.

22 THE COURT: That's not part and parcel of that  
23 13,338?

24 MR. NOWACKI: That's correct.

25 THE COURT: All right. Go on. All right. Go  
26 on.

27 MR. NOWACKI: And that's the reason why we have

1 discovery.

2 THE COURT: All right. Is that the only  
3 incorrect statement?

4 MR. NOWACKI: No. We also found on the --

5 MR. COLLINS: Your Honor, I don't really  
6 understand what Mr. Nowacki is saying. So if I  
7 could, you know, because this make it a little hard.  
8 I'm trying to do the calculations.

9 THE COURT: Well, what he's saying, and that's a  
10 fair question. He's saying that it's unreported on  
11 the affidavit of \$9,259 worth dividends for 2008; is  
12 that correct?

13 MR. NOWACKI: That is correct.

14 THE COURT: That's over and above the Neuberger  
15 account.

16 MR. NOWACKI: That is correct.

17 THE COURT: Is that what you're saying?

18 MR. NOWACKI: There's two Neuberger's accounts.

19 MR. COLLINS: Well, it presumes a lot. It  
20 presumes that we're using the 2008 numbers to arrive  
21 a that number.

22 THE COURT: As oppose to the 2009 number.

23 MR. COLLINS: That's correct. It presumes a lot  
24 of different things. You know, we're eight months  
25 into the year at that point. So Mr. Nowacki -- look,  
26 let's be clear, Mr. Nowacki as I've said before has  
27 filed this whistle blower complaint, okay, with the

1           IRS against my client. He's also trying to implicate  
2           the good folks at Neuberger Berman. As recently as  
3           two days ago he sends me an email that says, the  
4           president quit. That's an indication that he's  
5           really making their lives miserable. Of course, I  
6           couldn't find any news release that said Mr. Nowacki  
7           and his claims were the reason that Mr. Matza quit at  
8           Neuberger Berman.

9           This is all about, this is all about the claim  
10          that Mr. Nowacki is making with the IRS. In our  
11          absence, in our absence Mr. Nowacki took it upon  
12          himself, pretty presumptuously I might add, to put  
13          form 211 on my table, okay, an application for award  
14          for original information. Mr. Nowacki is motivated -  
15          -

16          THE COURT: You told me this before.

17          MR. COLLINS: But this all -- that's why I want  
18          to keep this narrow.

19          THE COURT: Fine.

20          MR. COLLINS: And I need to keep it narrow. And  
21          let the record reflect I'm returning 211 to Mr.  
22          Nowacki.

23          THE COURT: Fine.

24          MR. COLLINS: And some cockamamie wikipedia  
25          article that he printed out.

26          THE COURT: All right.

27          MR. NOWACKI: I did not. I did not print that

1 out.

2 MR. COLLINS: So any way the point is --

3 MR. NOWACKI: I got to respond to Mr. Collins  
4 here. That's an --

5 MR. COLLINS: Well, I want to stay on the motion  
6 for modification --

7 MR. NOWACKI: We are.

8 MR. COLLINS: We could be done in a half an hour  
9 if he stopped just --

10 THE COURT: All right. Take it easy.

11 MR. COLLINS: -- blubbering about all sorts of  
12 other nonsense.

13 THE COURT: No, no. Take it easy. Take it  
14 easy. All right. This goes back to what we've  
15 talked about several times. If you could  
16 substantiate this at some other time --

17 MR. NOWACKI: I understand.

18 THE COURT: -- it changes the picture.

19 MR. NOWACKI: The tax return in the evidence has  
20 a form --

21 THE COURT: Yes.

22 MR. NOWACKI: -- that indicates the dividend  
23 income.

24 THE COURT: Let's assume that's true. Let's  
25 assume that's true in 2008. How do you that stock or  
26 whatever it is wasn't sold and she didn't have it  
27 anymore in 2009. You got to show me she still had it

1 in 2009.

2 MR. NOWACKI: There's no 1099 that is produced  
3 yet for 2009.

4 THE COURT: Well, okay, so --

5 MR. NOWACKI: All right. So we have a trend  
6 line. What we do have is a trend line from 2006,  
7 2007 and 2008.

8 MR. COLLINS: I have to object, Your Honor. And  
9 I have to be more vigorous.

10 THE COURT: Sustained.

11 MR. COLLINS: Thank you.

12 THE COURT: Sustained. Sustained. We're not  
13 going to litigate in this motion what you thought was  
14 necessary to expedite the last time, and I told you  
15 we're in the wrong form, okay.

16 MR. NOWACKI: All I'm trying to do, Your Honor -  
17 -

18 THE COURT: You're doing it over and over again.

19 MR. NOWACKI: Your Honor, all I'm trying to do  
20 is to -- you just addressed the subject of how do I  
21 know that those assets are going to be there?

22 THE COURT: Yes. That's just one example.

23 MR. NOWACKI: That's, yeah, and what I'm trying  
24 to do is address what Your Honor asked me about. And  
25 I guess --

26 THE COURT: But you're missing the point.  
27 Because let's assume you're a hundred percent right,



1 I'm making this up as I go along. That is not the  
2 issue before me today unless you can prove it in some  
3 way, okay. And I can't jump to conclusions that  
4 you're jumping to. So this off the table for the  
5 purposes of this motion for modification. I don't  
6 know how many more times I can say it.

7 Now, if you want to continue along and give me  
8 some information that's going to be helpful to help  
9 me make an intelligent decision I'll be glad to give  
10 you as much time as you need, okay.

11 MR. NOWACKI: Okay. Your Honor, can we have in  
12 evidence the 2008 tax return, please?

13 THE COURT: Any objection?

14 MR. COLLINS: I think it's in.

15 THE COURT: Is it in?

16 MR. NOWACKI: Can we bring that up?

17 THE COURT: Sure.

18 THE CLERK: Yes, it is.

19 THE COURT: All right. You want to look at it?  
20 You want to see it?

21 MR. NOWACKI: Yes, please.

22 THE COURT: What is the offer of proof? What  
23 are you going to establish by this particular --

24 MR. NOWACKI: That in that tax return attached  
25 to that tax return is a 1099 that indicates...

26 THE COURT: I guess I could find it. 1099 that  
27 indicates what?

1           MR. NOWACKI: That indicates two things. Number  
2 one is, that this distribution that occurred of a  
3 \$100,000, and the dividend income attached to it  
4 comes from a trustee account.

5           THE COURT: Well, we went through this before,  
6 though, didn't we? Didn't you tell me that before?

7           MR. NOWACKI: They deny that that's the case.  
8 Part of Judge Shay's order on June 15 was to declare  
9 all trust distributions since the time of the  
10 divorce. And that's why I need the 2005 tax return.  
11 That's why I needed the 2006 tax return, the 2007 tax  
12 return, and the 2008 tax return.

13          MR. COLLINS: He got 2006. He got 2007. He got  
14 2008. And I will represent on behalf of my client,  
15 unless she corrects me, there have been no trust  
16 distributions since the date of dissolution. This is  
17 the monster is under the bed problem that we continue  
18 to have with Mr. Nowacki with whom a little bit of  
19 knowledge is dangerous and unusually leads him the  
20 wrong direction.

21          THE COURT: Well --

22          MR. COLLINS: But in any event there's no trust  
23 -- I think she testified to that. There's been no --  
24 he's inferring something which my client said, isn't  
25 there. Now, if he could prove to the contrary, good  
26 for him.

27          But she's already testified she's had no -- I

1 mean, I don't know how he proves the negative.

2 MR. NOWACKI: Your Honor, if you take a look at  
3 the sequence of the 1099's between 2006, 2007, and  
4 2008 so I would like to put all three tax returns on  
5 the court record that were produced by -- as part of  
6 production. Because in order to show the differences  
7 of what happened in 2008 you need to look at 2007 --  
8 '6 and '7 together. It has to be done that way,  
9 because you cannot establish what, in fact, occurred  
10 regardless of whether or not they want say it with  
11 her.

12 MR. COLLINS: Your Honor, this is --

13 MR. NOWACKI: They misrepresented a number of  
14 things already, and continue to do so in this court.

15 THE COURT: All right. Look I don't want to go  
16 on with this all day. Did you -- give it back to the  
17 Clerk, unless you need it right now.

18 MR. NOWACKI: I want to point out --

19 THE COURT: All right. Let me just say  
20 something. Wasn't there testimony the last time we  
21 were here after you went through step by step with  
22 your former wife all her sources of income including  
23 her gifts from her parents that her bottom line  
24 income was \$384,000.

25 MR. NOWACKI: That was the W --

26 THE COURT: No. That was everything but the  
27 kitchen sink.

1           MR. NOWACKI: Okay. Okay. Not including the  
2           \$100,000 trust distribution.

3           MR. NOWACKI: Your Honor. Your Honor, she  
4           testified that that money wasn't a distribution. She  
5           testified it came from her account. It was an asset.

6           THE COURT: There was evidence where you could  
7           trace where it came from.

8           MR. COLLINS: That's correct. And Mr. Nowacki -  
9           - I mean, I don't know how far afield you want to go  
10          on this, but the reality is, if I understand  
11          correctly, some relationship between that Neuberger  
12          Berman Company and Lehman Brothers, okay --

13          THE COURT: We went through this last time.

14          MR. COLLINS: Okay.

15          THE COURT: I know it by heart.

16          MR. COLLINS: Okay.

17          THE COURT: I know it by heart.

18          MR. NOWACKI: All right. Your Honor, it's very  
19          clear here that in 2008, and I'm going to mark the  
20          2007 return.

21          THE COURT: Let me try to make it even simpler.  
22          I have to ask the other side if they're willing to  
23          agree on this, I'm not sure that they will. Is it  
24          correct to say, Mr. Collins, or fair to say that your  
25          client's income for this last year that were in  
26          question is pretty close to what her former husband  
27          makes? Is that true or false?

1           MR. COLLINS: Well, it's an interesting  
2 question, Your Honor, and I'll tell you why. Looking  
3 at the September 15 financial affidavit --

4           MR. NOWACKI: No --

5           THE COURT: Let him answer it.

6           MR. NOWACKI: I've got one those here.

7           MR. COLLINS: Yes, but I've got my rights too.

8           THE COURT: All right. I directed the question  
9 to you. Now, I want to ask you this question --

10          MR. COLLINS: Mr. Nowacki --

11          THE COURT: -- to try and shorten this.

12          MR. COLLINS: -- hypocritically speaking, okay,  
13 because he made a big fuss about whether or not a  
14 bonus was included on her financial affidavit. I  
15 can't make head nor tail of what he's telling me  
16 about his bonus on his financial affidavit. I would  
17 respectfully --

18          THE COURT: We didn't get there. We didn't get  
19 there.

20          MR. NOWACKI: You'll have the chance to cross-  
21 examine me --

22          MR. COLLINS: Well, Your Honor, asked me -- hey,  
23 who are talking to? Your Honor, this isn't right.  
24 He's coming from the stand. This is not right.

25          THE COURT: You are right. If we're going to  
26 get into a shouting match, we're going suspend this  
27 hearing and we'll finish it at Christmas time.

1 MR. COLLINS: Okay. Now --

2 THE COURT: I'm trying to finish this in an  
3 orderly manner while these children are still small.

4 MR. COLLINS: Your Honor, I cannot answer Your  
5 Honor's question because I can't properly define --

6 THE COURT: All right. That's fine.

7 MR. COLLINS: -- Mr. Nowacki's income.

8 THE COURT: That was just an approach I was  
9 trying to make.

10 MR. COLLINS: I would answer it if I could  
11 understand his affidavit.

12 THE COURT: Fine. Okay. That's fair. Mr.  
13 Nowacki, I'll try to keep quiet. You go ahead. But  
14 get off this other than what we've just been talking  
15 about because we've covered that.

16 MR. NOWACKI: Okay. All right. The issue here,  
17 Your Honor, is whether or not --

18 THE COURT: Is this an exhibit too or is this  
19 yours?

20 MR. COLLINS: I am submitting for approval the  
21 revised 2007 return and the 2008 return to go in the  
22 court record.

23 THE COURT: Revised whose return? Yours?

24 MR. NOWACKI: No.

25 THE COURT: Oh.

26 MR. NOWACKI: Suzanne Sullivan. This was part  
27 of the production that was given to me.

1 THE COURT: All right. Is there any objection?

2 MR. COLLINS: Relevance.

3 THE COURT: I don't know.

4 MR. COLLINS: I mean, we're here on a motion to  
5 modify. I don't know what's relevant about the 2007  
6 return.

7 THE COURT: That's a fair question. What's the  
8 relevant about it?

9 MR. NOWACKI: The relevancy is trend line of the  
10 foreign income that was not declared in the financial  
11 affidavit.

12 MR. COLLINS: Objection.

13 THE COURT: Sustained. You can mark it for  
14 identification. Is it in? No, it's not. Mark it  
15 for identification, so it will be part of the record,  
16 okay. And I'm sustaining the objection, and then  
17 we'll see where we go.

18 Which two years or one?

19 MR. NOWACKI: Well, there's the original 2007  
20 and then there's a revised 2007 and 2008.

21 THE COURT: All right. The original 2007 for  
22 identification is the next number. And then the  
23 revised one is also for identification. Can we get  
24 the clip back.

25 THE CLERK: So this will be Defendant's Exhibit  
26 17, marked for ID you said?

27 THE COURT: Yes. Both of them. All right. Go

1 ahead while she's marking them.

2 (Exhibit 17 and Exhibit 18, were marked for  
3 identification only.)

4 MR. NOWACKI: And here is 2006.

5 THE COURT: All right. For identification.

6 MR. NOWACKI: And I also want to note these are  
7 my original copies so it, therefore, mitigates the  
8 need to destroy these copies at the end of the  
9 proceedings which is then part of the court docket.

10 MR. COLLINS: I don't know what that means, Your  
11 Honor.

12 MR. NOWACKI: There's a stipulation in the  
13 protective order that says at the end of 30 days I  
14 have to either turn the materials over, and what I'm  
15 indicating here is I'm turning them into the Court so  
16 I don't have to be questioned about this at a later  
17 time.

18 MR. COLLINS: Well, the reality is, if I  
19 understand correctly, exhibits are return within a  
20 certain period of time after the case. So to the  
21 extent that they are in the court file I'm not  
22 worried about it. To the extent they are returned to  
23 the Mr. Nowacki the provisions of the Protective  
24 Order dated August 13, 2009, still apply.

25 THE COURT: Of course. His comments are noted,  
26 and he can argue about it then if it becomes a  
27 problem. All right. Go ahead, Mr. Nowacki. Go



1 ahead Mr. Nowacki.

2 MR. NOWACKI: Okay. What this relates to also  
3 then, you know, the current year income since Your  
4 Honor addressed that subject of the validation of  
5 this process, etc. And that, you know, at this point  
6 in time, you know, the income for the defendant is  
7 declining. My base pay remained the same for the  
8 calendar year that starts in April 2009. My base pay  
9 is \$243,000.

10 THE COURT: Wait a minute. Let me write this  
11 down. Two forty-three?

12 MR. NOWACKI: That is my base pay. That's  
13 correct.

14 THE COURT: All right. Go ahead.

15 MR. NOWACKI: All right. And then in each  
16 quarter of the year, all right, I receive various  
17 quarterly reviews, all right. That are paid  
18 concurrently with the reconciliations that we do in  
19 Schedule B, all right.

20 So the first quarter of 2009 --

21 THE COURT: Okay.

22 MR. NOWACKI: -- we receive --

23 THE COURT: It's not calendar, is it, first  
24 quarter?

25 MR. NOWACKI: No, it isn't.

26 THE COURT: April, May, and June?

27 MR. NOWACKI: It's, basically, paid in February.

1 THE COURT: For what?

2 MR. NOWACKI: Of 2009.

3 THE COURT: For the three months before it?

4 MR. NOWACKI: For the three months before That's  
5 correct.

6 THE COURT: So it's November, December, and  
7 January.

8 MR. NOWACKI: Right. That's paid in February

9 THE COURT: Wait a minute. November through  
10 January.

11 MR. NOWACKI: That check was \$6,000 this year.

12 THE COURT: Okay.

13 MR. NOWACKI: Last year by reference point it  
14 was \$14,509.

15 THE COURT: And that's what it says on your  
16 affidavit.

17 MR. NOWACKI: That's correct.

18 THE COURT: Okay.

19 MR. NOWACKI: The first quarter review paid in  
20 the in the second quarter was \$6,102.

21 THE COURT: Wait a minute. Six thousand one O  
22 two?

23 MR. NOWACKI: One O two gross.

24 THE COURT: All right. Go ahead.

25 MR. NOWACKI: And the prior year was \$10,169.

26 THE COURT: Okay. Did you get to the third  
27 quarter yet?

1 MR. NOWACKI: Yes. It was \$7,450.

2 THE COURT: All right.

3 MR. NOWACKI: Versus \$10,822. And if we use the  
4 template for the 7-4-5-0 for the fourth quarter last  
5 years was 8-2-5-7.

6 THE COURT: Wait a minute.

7 MR. NOWACKI: I took 10 percent off which may be  
8 high or low, how knows.

9 THE COURT: Wait a minute. Fourth quarter  
10 that's an estimate.

11 MR. NOWACKI: That hasn't been paid, that's  
12 right.

13 THE COURT: It's an estimate. How much did you  
14 come up with, what did you say?

15 MR. NOWACKI: I said, 7-4-5-0.

16 THE COURT: That was for the third quarter.

17 MR. NOWACKI: That's correct. I'm making an  
18 estimate for fourth quarter that it would 7-4-5-0.

19 THE COURT: Oh, I see. Same as third quarter.

20 MR. NOWACKI: Correct. And last year was 8-2-5-  
21 7.

22 THE COURT: All right.

23 MR. NOWACKI: If you said that there was a trend  
24 line, it might be even lower than that. But I'm not  
25 going to get into it.

26 THE COURT: Okay.

27 MR. NOWACKI: My annual review that was paid in

1 March of this year was \$85,500.

2 THE COURT: Wait a minute. And that was for  
3 what year?

4 MR. NOWACKI: That was for the prior.

5 THE COURT: For '08?

6 MR. NOWACKI: '08, correct, Your Honor.

7 THE COURT: Wait a minute. It was paid in March  
8 of this year.

9 MR. NOWACKI: That's correct. And the prior  
10 year --

11 THE COURT: One second. Was how much? Eighty-  
12 five did you say?

13 MR. NOWACKI: Eighty-five five.

14 THE COURT: And it was hundred fourteen before?

15 MR. NOWACKI: It was one fourteen, yes, Your  
16 Honor.

17 THE COURT: Okay.

18 MR. NOWACKI: All right. Now, we're going to  
19 get into a somewhat complicated area that occurred in  
20 2007 and 2008. And it has to do with something  
21 called a voluntary, it's called an VEO. And what it  
22 did it allowed certain stock options --

23 THE COURT: What did you call it voluntary what?

24 MR. NOWACKI: Exchange offer. A VEO.

25 THE COURT: Go ahead.

26 MR. NOWACKI: And that what the company did in  
27 2006, and I have an email that says that we all

1           agreed to this. Okay. It took form Schedule A, I  
2           believe, which had all the stock options on it. It  
3           gave us the option to take certain underwater  
4           unrestricted shares and turn those into restricted  
5           shares.

6           THE COURT: Okay.

7           MR. NOWACKI: And that the distribution of those  
8           assets are subject of the original split that is in  
9           the separation agreement.

10          THE COURT: Okay.

11          MR. NOWACKI: So it can't be included as income,  
12          is my assertion here, because it was paid out of two  
13          tranches. One tranche was paid out in 2008 and  
14          another tranche was pulled out in 2009. When that  
15          restrict shares then showed up that showed up as  
16          income on my W2 in 2008 which is why my income jumped  
17          substantial as if there was a distribution VEO. That  
18          when we sell those options Suzanne is entitled to  
19          half of the proceeds. For those VEO's relating to  
20          Schedule A.

21          And the way that they did, unfortunately, they  
22          did and they just put them all together. So there's  
23          an issue of how many. And my financial affidavit  
24          reflects how many are attributable to her because  
25          what they do is they reduce the number of shares that  
26          actually when the fully vest to pay for the taxes on  
27          the VEO.

1           THE COURT: Where does it show on your  
2 affidavit?

3           MR. NOWACKI: That's, that's on my affidavit.  
4 I'll have to get it out, Your Honor.

5           THE COURT: The one here, this one?

6           MR. NOWACKI: Yes. That's referred to I think  
7 is the one thousand fifty-seven -- 1,025 shares.

8           THE COURT: It's page 8 of his affidavit, Mr.  
9 Collins.

10          MR. NOWACKI: Correct.

11          THE COURT: I see. That's an asset then though;  
12 right? That's not treated as income, is it?

13          MR. NOWACKI: Well, it was for the purposes of  
14 my W2, and that's the reason why I'm bringing it up.

15          THE COURT: Okay. But on your affidavit you  
16 didn't show it that way.

17          MR. NOWACKI: That is correct. And that's why  
18 I'm trying to explain --

19          THE COURT: I see. As far as -- well, why did  
20 they put it that way? You told me --

21          MR. NOWACKI: Because it was a restricted share  
22 distribution. And restricted shares for the purposes  
23 of how they decided to put into your wage  
24 compensation it showed up on your W2. And it shows  
25 up on the individual yearly last paycheck that would  
26 authenticate exactly what I'm saying.

27          THE COURT: Well, for example, the twenty-seven

1           eighty-five restricted shares fully vested? Eleven  
2           dollars and eighty-six cents that's your; right?  
3           That's an asset; is that right? That's not subject  
4           to split. You see where it is?

5           MR. NOWACKI: No. The VEO --

6           THE COURT: I know.

7           MR. NOWACKI: Okay. The other ones, yes. The  
8           other ones are an asset.

9           THE COURT: So what you're saying is that that  
10          number on your affidavit of fifty-five ninety-four,  
11          what did it show on your W2?

12          MR. NOWACKI: No. The number that would have  
13          shown on the W2 was the restricted shares that were  
14          given in 2007 of the VEO distribution which totaled..

15          THE COURT: But you didn't put it on as income  
16          on your affidavit?

17          MR. NOWACKI: That's right. But I'm trying to  
18          address what Attorney Collins will later try to say I  
19          was hiding in my --

20          THE COURT: Oh, I see. You mean, the question  
21          will be, why didn't you put it in as income?

22          MR. NOWACKI: Correct.

23          THE COURT: Okay. So you decided to segregate  
24          that because of the fact 50 percent of that would go  
25          to your former wife at some point in time.

26          MR. NOWACKI: That is correct, Your Honor.

27          THE COURT: All right. Go ahead.

1           MR. NOWACKI: So that's another distribution  
2           issue that's going into the kids accounts that the  
3           Court may or may not want to take into consideration  
4           on the educational issue.

5           THE COURT: Well, while you're on your current  
6           affidavit, if you don't mind, Mr. Collins, I've got a  
7           couple a questions I'll ask him now on his current  
8           affidavit.

9           MR. COLLINS: Yes, Your Honor. In fact, what I  
10          was going to suggest is while Mr. Nowacki seems to  
11          disclose a lot of this bonus information it's not  
12          carried over to the bottom line. So I don't know  
13          what's going to be of that.

14          THE COURT: All right. We'll get to that in a  
15          minute. Do got you financial affidavit we're  
16          talking?

17          MR. NOWACKI: Yes, I do. Yes, I do.

18          THE COURT: Okay. The one dates September 15.  
19          Go to page, I'm going to jump around a little bit,  
20          but let's go to the asset part.

21          MR. NOWACKI: Okay.

22          THE COURT: This is page 7. I don't understand  
23          your arithmetic on the real estate. Could you  
24          explain that to me?

25          MR. NOWACKI: And your question about what you  
26          don't understand is?

27          THE COURT: Well, let me explain it to you. You



1 say your residence is worth 1.650 million. Less  
2 current mortgage estimated 6-7-2, less commission and  
3 sales. So you add the mortgage balance and the  
4 commission and sales and you put out in the right-  
5 hand column that the equity is the sum of those two  
6 parts.

7 MR. NOWACKI: That would be the difference  
8 between the value of the property and the outstanding  
9 mortgage.

10 THE COURT: Well, that's different --

11 MR. NOWACKI: Minus the commission.

12 THE COURT: Well, that's different than 772.  
13 It's a million dollars. Nine hundred and some odd  
14 thousand dollars. Check it out and tell me if I got  
15 that right?

16 MR. NOWACKI: You're looking on page 10?

17 THE COURT: No, on 7, page 7.

18 MR. NOWACKI: That is -- so that number should  
19 be 878.

20 THE COURT: Okay.

21 MR. NOWACKI: That would be the correct number.

22 THE COURT: Well, let me see. Eight seventy-  
23 eight, is that what you said? Yes, that's what you  
24 said.

25 MR. NOWACKI: Yes, Your Honor.

26 THE COURT: Okay.

27 MR. NOWACKI: That's an error.

1 THE COURT: All right. Now, you go to page 8,  
2 see page 8?

3 MR. NOWACKI: Uh-huh.

4 THE COURT: Where it says CBS 401K?

5 MR. NOWACKI: Yes.

6 THE COURT: Six hundred and forty-eight  
7 thousand?

8 MR. NOWACKI: Yes.

9 THE COURT: And less the loan of \$23,000, see  
10 that?

11 MR. NOWACKI: Correct.

12 THE COURT: Then CBS pension plan adjusted.

13 MR. NOWACKI: Yes. I have a lump sum  
14 distribution pension plan.

15 THE COURT: Your total pensions, how did you get  
16 the 1.420?

17 MR. NOWACKI: Eight eighty-six six forty-eight  
18 minus twenty-four.

19 THE COURT: Say it again.

20 MR. NOWACKI: I think if you do the 868 plus the  
21 886 minus the 24.

22 THE COURT: Wait a minute, where's the 868?

23 MR. NOWACKI: Eight hundred and eighty-six  
24 thousand dollars is the lump sum distribution --

25 THE COURT: Okay.

26 MR. NOWACKI: -- that would be the current value  
27 of that plan.

1 THE COURT: Present value of that plan?

2 MR. NOWACKI: That's what the website tells me.

3 THE COURT: All right. And 886, go ahead.

4 MR. NOWACKI: And the six forty-eight three  
5 thirty-eight.

6 THE COURT: Yes.

7 MR. NOWACKI: Total 1-5-3-4.

8 THE COURT: Why not 648...

9 MR. NOWACKI: Okay. Minus the 24 loan.

10 THE COURT: Yes. How much does that come to?

11 MR. NOWACKI: That would be 1-5-1-0.

12 THE COURT: No, I think it would be more than  
13 that, wouldn't it? Eight eighty-six and six forty-  
14 eight less --

15 MR. NOWACKI: Minus 24.

16 THE COURT: Yes. How much is that?

17 MR. NOWACKI: One five one O.

18 THE COURT: One five one O.

19 MR. NOWACKI: Right.

20 THE COURT: That's a different number than I  
21 get. Let me just do that again myself. I know it  
22 was more than 1.4.

23 MR. NOWACKI: And, Your Honor, you know, I have  
24 to say it's very unusual now to have a lump sum  
25 distribution plan. The only reason why I have is I  
26 stayed with the same company for 34 years I didn't  
27 move around.

1 THE COURT: I see that.

2 MR. NOWACKI: You know, I'm also 57 years old.  
3 And plaintiff is 46 she's got a lot of years left to  
4 work. Forty-six now.

5 THE COURT: What number did you get one five  
6 ten?

7 MR. COLLINS: I would concur with Mr. Nowacki's  
8 number, Your Honor.

9 THE COURT: What one five ten?

10 MR. COLLINS: Yes, Your Honor. I did six forty-  
11 eight plus eight eighty-six minus twenty-four.

12 MR. NOWACKI: Yes. That's what I did.

13 THE COURT: Yes. One five ten three forty.

14 MR. NOWACKI: That's 34 years worth of work.

15 THE COURT: Okay. The next page it's a small  
16 item, but Lincoln Financial 1509 and then Carrie and  
17 Tim face 20,000, you get a different number down  
18 below?

19 MR. NOWACKI: That must be because I carry  
20 forward from -- there's a -- I don't think I updated  
21 that information quite, frankly, Your Honor.

22 THE COURT: All right.

23 MR. NOWACKI: Because I know the policy is all  
24 changed. I'll be happy to do that by tomorrow.

25 THE COURT: All right. I'm going back to the  
26 income part, you explained some of it in your  
27 testimony a few minutes ago about the dividend and

1 the bonuses. But as Mr. Collins point out, you  
2 didn't carry these out; right? So your total --

3 MR. NOWACKI: In terms of what the values are  
4 or?

5 THE COURT: Well, no, the total of net monthly  
6 income. Do you show what the net monthly income is  
7 as a result of those bonuses? That's your point.

8 MR. COLLINS: It is, Your Honor.

9 THE COURT: Yes.

10 MR. NOWACKI: No, I didn't. In the same way we  
11 both categorized our bonuses, you know, she's a  
12 higher base salary.

13 THE COURT: Yes.

14 MR. NOWACKI: And I get more of mine quarter to  
15 quarter. So when you add the two things together  
16 that really becomes what my projected compensation is  
17 going to be for this year. It's going to be 243 and  
18 855 and those four bonus checks.

19 THE COURT: No, no. What I'm saying, the  
20 affidavit that you filed for this hearing you said  
21 whatever the numbers are gross and net. When you got  
22 a total net monthly income, did you add any of that  
23 into the --

24 MR. NOWACKI: No. No.

25 THE COURT: Well, that's the point.

26 MR. NOWACKI: Well, but the point it's listed on  
27 the back here the same way we both treated our annual

1 bonuses separately we didn't put it into our monthly  
2 income because it's not monthly income.

3 My position on the way I listed that the way  
4 that I did is it's not monthly income. Okay. I  
5 don't get that every month. That's not part of my  
6 cash flow.

7 THE COURT: Well, that's a different issue. The  
8 issue is --

9 MR. NOWACKI: But that's the agreement is  
10 structured with the quarterly timed as they are as to  
11 relate then to the settle up here that relates to  
12 when I get those four payments.

13 THE COURT: At the end of the year your ex-wife  
14 earns salary plus bonus.

15 MR. NOWACKI: Correct.

16 THE COURT: Number. So for that year you went  
17 through her whole income you added it up for the  
18 whole year you put it in.

19 MR. NOWACKI: Right.

20 THE COURT: Well, then you should do the same --

21 MR. NOWACKI: Well, I was planning on it, Your  
22 Honor, but I haven't been able to get to the stream  
23 of the information in regards to giving that detail.  
24 I got it all on a piece of paper here.

25 THE COURT: Well, when you both file financial  
26 affidavits updated that's what the Court is supposed  
27 to rely on what you updated your affidavit.

1           MR. NOWACKI: I understand that. And the  
2 information is there. It's just in a different place  
3 because I don't get it month to month. I didn't  
4 consider it to be monthly income.

5           THE COURT: So it doesn't count?

6           MR. NOWACKI: No. It's there. It's counted as  
7 income.

8           THE COURT: Okay.

9           MR. NOWACKI: It's clearly stated as income.

10          THE COURT: All right.

11          MR. NOWACKI: I mean, it's just a different way  
12 of listing it because I don't get it month to month  
13 so it's not part of my month to month ability to pay.  
14 And that's why we have the year end structure the way  
15 we do with the quarterly payments due as it relates  
16 to the distribution of the --

17          THE COURT: Yes. But we're dealing with a  
18 modification here today where I have to compare you  
19 incomes for the year.

20          MR. NOWACKI: Right.

21          THE COURT: And how to divide it; right?

22          MR. NOWACKI: Yeah.

23          THE COURT: Okay. Go on continue with your  
24 testimony.

25          MR. NOWACKI: All right. So now we're off of  
26 the...

27          THE COURT: Yes. We're off the affidavits.

1           MR. NOWACKI: All right. So what I wanted to do  
2 is to clarify if you looked at the W2 in 2007 and  
3 2008 that included these voluntary exchange offered  
4 distributions.

5           THE COURT: I understand.

6           MR. NOWACKI: Okay. And they also included the  
7 accrued dividend income from when we signed up for  
8 those plans in 2005. That there was a cumulated  
9 dividend income that was also a one time only in 2007  
10 and a one time only in 2008.

11          THE COURT: Let me ask you this --

12          Mr. NOWACKI: So that doesn't repeat itself any  
13 longer, and, therefore, I'm saying that that's  
14 extraordinary income one time only payment and it  
15 doesn't relate to future and predictable income.

16          THE COURT: As you sit here today, sir. What do  
17 you want me to consider as your total available  
18 income today, and what your former wife's total  
19 income is today?

20          MR. NOWACKI: Okay.

21          THE COURT: We'll talk about you first, okay?

22          MR. NOWACKI: Yes.

23          THE COURT: Now, you told me part of it already,  
24 but let's go over it again. Go ahead.

25          MR. NOWACKI: We have a base salary of \$243,000

26          THE COURT: Base two hundred and forty --

27          MR. NOWACKI: We have excess life insurance of



1           \$989.

2           THE COURT: Wait a minute. Nine eighty-nine is  
3 excess life?

4           MR. NOWACKI: Correct.

5           THE COURT: Okay.

6           MR. NOWACKI: Interest income \$9.

7           THE COURT: Okay.

8           MR. NOWACKI: All right. Then we have the  
9 restricted stock --

10          THE COURT: Excuse me, that \$989 is an annual  
11 number?

12          MR. NOWACKI: Yes, it is, Your Honor.

13          THE COURT: Okay.

14          MR. NOWACKI: The restricted RSU dividend income  
15 is estimated to be at \$1,000. And the reason why it  
16 goes down rather precipitously was that the company  
17 cut its dividend from 27 cents to 5 cents.

18          THE COURT: And that's a thousand, is that what  
19 you said?

20          MR. NOWACKI: That's correct.

21          THE COURT: All right.

22          MR. NOWACKI: Based on the number of shares that  
23 will be vested for next year.

24          THE COURT: Okay.

25          MR. NOWACKI: Then we have the four quarterly  
26 reviews.

27          THE COURT: Quarter.

1 MR. NOWACKI: Which were \$6,061.02.

2 THE COURT: No, but let's just total them.

3 MR. NOWACKI: Okay.

4 THE COURT: Twenty-seven thousand dollars, is  
5 that what you get?

6 MR. NOWACKI: Twenty-seven thousand dollars.

7 THE COURT: Well, do you want to check it?  
8 Seventy-four fifty twice is fourteen nine; right?  
9 And twelve one is twenty-seven; right? Is that  
10 correct?

11 MR. NOWACKI: That is correct.

12 THE COURT: All right. Anything else?

13 MR. NOWACKI: And then we have the annual review  
14 --

15 THE COURT: Okay.

16 MR. NOWACKI: -- which, of course, is not  
17 guaranteed. But, you know, last year was eighty-five  
18 five. So if we're going to use annual reviews on  
19 both sides, all I would say is the fair thing to do  
20 is to use 75 for Suzanne, since that's what she got  
21 last year.

22 THE COURT: What's your eighty-five five you  
23 said?

24 MR. NOWACKI: And mine is eighty-five five.

25 THE COURT: So is that it now for you?

26 MR. NOWACKI: That includes everything.

27 THE COURT: All right. I guess you went over

1           your wife's with her testimony last time, so I don't  
2           have to ask you to do that this time; right?

3           MR. NOWACKI: Well, just to, you know, review,  
4           you know, the base salary, I believe, that's in the  
5           motion itself, you know for the first three months is  
6           43,000. And then the two ninety becomes two forty-  
7           three, I believe, is the number. So you add those  
8           together and that would be what the projected --

9           THE COURT: Say that again. The first three  
10          months is what?

11          MR. NOWACKI: Forty-three thousand that would be  
12          three months of the old base salary.

13          THE COURT: I understand. So \$43,000 represents  
14          \$14,000 a month or something like?

15          MR. NOWACKI: Right.

16          THE COURT: Three months \$43,000. And then the  
17          nine months is what? How much? Well, the annualized  
18          salary is what? You just said it.

19          MR. NOWACKI: Right. And then there was --

20          THE COURT: Well, wait a minute, what was that  
21          the raise?

22          MR. NOWACKI: I believe, it's in the motion.

23          THE COURT: You just said it. Mr. Collins, can  
24          you help us on that, what was the raise?

25          MR. COLLINS: I apologize, Your Honor.

26          THE COURT: That's all right.

27          MR. COLLINS: I thought you were talking to Mr.

1 Nowacki.

2 THE COURT: No, no. He's looking for it. What  
3 was the raise that your client got starting --

4 MR. COLLINS: I can tell Your Honor that by  
5 looking at the contract.

6 THE COURT: It's all over my forms here some  
7 place.

8 MR. NOWACKI: Two ninety.

9 THE COURT: What did you say, two-ninety?

10 MR. NOWACKI: Two-ninety the base for the rest  
11 of the year.

12 MR. COLLINS: You want to know from what to  
13 what? It went from two-sixty to two seventy-five.

14 MS. SULLIVAN: It goes to two-ninety in 2010.

15 MR. COLLINS: Not till March of 2010.

16 THE COURT: Two seventy-five. So two seventy-  
17 five.

18 MR. COLLINS: That's her current base.

19 THE COURT: Two seventy-five is thirty thousand.  
20 It's about \$30,600 a month; right? No -- yes.

21 MR. COLLINS: No, Your Honor.

22 THE COURT: Uh-huh.

23 MR. COLLINS: No.

24 THE COURT: No. Two seventy-five, oh, by 12.

25 MR. COLLINS: Yes.

26 THE COURT: I divided by... It's about \$23,000 a  
27 month.

1 MR. COLLINS: That sounds right, Your Honor.

2 THE COURT: Twenty-three times nine is two  
3 hundred seven. Anybody disagree with the arithmetic?

4 MR. NOWACKI: I do.

5 THE COURT: You do?

6 MR. NOWACKI: I had two months at a two sixty  
7 base which is forty-three three.

8 THE COURT: That's three months. You said --

9 MR. NOWACKI: It's two months. It starts --  
10 when does the contract date start March?

11 MR. COLLINS: March 10.

12 MR. NOWACKI: Tenth.

13 MR. COLLINS: March 10.

14 THE COURT: So you want to do it two months, is  
15 that what you're saying?

16 MR. NOWACKI: Yes. Forty-three three is the  
17 first two months at a two sixty base and the next ten  
18 months at a two seventy-five base is two twenty-nine  
19 one sixty-six.

20 The bonus --

21 THE COURT: Wait a minute. You're going to fast  
22 for me.

23 MR. NOWACKI: All right.

24 THE COURT: What did you say the next nine  
25 months would be?

26 MR. NOWACKI: The next ten months.

27 THE COURT: Ten months.

1 MR. NOWACKI: Two twenty-nine one sixty-six.

2 THE COURT: That's Two seventy-two four sixty-  
3 six base?

4 MR. NOWACKI: That's correct.

5 THE COURT: All right. And what about the  
6 bonus?

7 MR. COLLINS: Seventy-five in this past August,  
8 Your Honor. Seventy-five gross.

9 THE COURT: Okay.

10 MR. NOWACKI: Then we have car loans.

11 THE COURT: How much was that?

12 MR. NOWACKI: Seventy-two hundred.

13 THE COURT: Go ahead.

14 MR. NOWACKI: Excess life insurance.

15 THE COURT: Go ahead. How much was that?

16 MR. NOWACKI: Five forty-six, I believe.

17 THE COURT: Five hundred and forty-six? Okay.

18 MR. NOWACKI: I'm sorry, five ninety.

19 THE COURT: All right.

20 MR. NOWACKI: Then we have dividend income from  
21 Neuberger and Berman.

22 THE COURT: Wait a minute, let me add up the  
23 employment. Then dividend income?

24 MR. NOWACKI: Right. In 2008, which is all I  
25 have up to date, if you add the two Neuberger  
26 accounts together it's fifteen five thirty-eight.

27 THE COURT: All right. Go ahead.

1           MR. NOWACKI: And then we had from the joint  
2           Neuberger account that was five ninety-four.

3           THE COURT: Five hundred and ninety-four.

4           MR. NOWACKI: Correct. That's the total. I  
5           allocated half at two forty-seven.

6           THE COURT: You used two forty-seven.

7           MR. NOWACKI: Yes, that's what I used. You  
8           know, I split them.

9           THE COURT: All right.

10          MR. NOWACKI: And the joint on the other  
11          Neuberger account was two seventy-four was half.

12          THE COURT: Two seventy-four was half?

13          MR. NOWACKI: Yes, Your Honor.

14          THE COURT: So is that is of the dividend income  
15          and things of that sort?

16          MR. NOWACKI: There was interest income of a  
17          hundred and thirty-seven bucks.

18          THE COURT: Okay. Let me add that up.

19          MR. NOWACKI: And that excludes the discussion  
20          on the overseas dividend income.

21          THE COURT: Yes. Okay. Just bear with me a  
22          minute. Well, this is interesting, because if you  
23          add up the numbers that you're giving me, and you can  
24          double check this and I will too between now and next  
25          time, the numbers you've given me for yourself  
26          annually is three fifty-seven four eighty-nine. And  
27          the numbers you've given to me for your former wife

1 without the dividends and without the gifts and  
2 everything else that we haven't talked about is three  
3 fifty-five two fifty-six. So if we just did it on  
4 salaries and bonuses their equivalent.

5 Okay. You want to add something else?

6 MR. NOWACKI: Well, really a few other issues.

7 THE COURT: Yes. Go ahead.

8 MR. NOWACKI: You know, one is the dividend  
9 income, which is additional to that, so that's  
10 another fifteen thousand --

11 THE COURT: I listed them what you said. I just  
12 didn't --

13 MR. NOWACKI: Okay. All right. And then we  
14 have the overseas dividends which are very clear in  
15 the 2008 return. There's a pattern here that exists  
16 over the three years.

17 MR. COLLINS: Your Honor, is well aware of my  
18 objection.

19 THE COURT: All right.

20 MR. NOWACKI: It's not -- this is income.

21 MR. COLLINS: Your Honor, I'm going to ask --  
22 I'm going to object. Your Honor is going rule. Mr.  
23 Nowacki can respond to the objection, but he can't  
24 address me directly.

25 THE COURT: That's the way it works when you're  
26 playing a lawyer. Besides that what else? The gift  
27 from her parents.



1 MR. NOWACKI: We have gifts.

2 THE COURT: We went through this last time, so I  
3 don't have to...

4 MR. NOWACKI: Correct. We have gifts, etc.,  
5 which were claimed to be five and six whatever.

6 THE COURT: Let's go on to something else.

7 MR. NOWACKI: All right. And the last thing is  
8 the subject of the trust distribution. Chase  
9 distribution of one hundred -- I went to the branch  
10 office across the street at Chase and talked to the  
11 Branch Manager.

12 MR. COLLINS: I'm going to object, Your Honor.

13 THE COURT: Yes, you can't tell me.

14 MR. COLLINS: The alleged distribution, which we  
15 say is just a transfer of assets, happened, I don't  
16 know, a year and a half ago.

17 THE COURT: Well, look, let me just say this, it  
18 really doesn't do any good what I say because  
19 somebody is not listening. But the point is this,  
20 the record is replete with your position on those  
21 assets over and over again, okay. So myself or some  
22 Appellate Court or somebody else has the record right  
23 in from of them to know that's your claim. Okay.  
24 And so I have to weigh it and make a decision how  
25 much that impacts on what I'm going to do and then  
26 we'll take it from there.

27 MR. NOWACKI: All right. Well, I would like to

1 put into evidence a copy of the Chase bank statement  
2 authorizations, etc., etc., that I got from the  
3 branch office since that's their document. I would  
4 like to have applied to the record.

5 MR. COLLINS: Well, Your Honor, before I object  
6 I need to see what it is that Mr. Nowacki is  
7 proposing.

8 THE COURT: Yes, I'm a little confused.

9 MR. COLLINS: However, I would also like to  
10 inquire as to whether or not the documents in  
11 question were gotten through our production or  
12 whether or not they were gotten by Mr. Nowacki from  
13 Chase. Because to my knowledge he has no  
14 authorization to get anything from Chase for Ms.  
15 Sullivan.

16 MR. NOWACKI: It doesn't. I have an account  
17 relationship because CBS is a big client of theirs,  
18 and I went to the bank and I got a copy of...

19 MR. COLLINS: I'll just voir dire when he  
20 presents what he's going to present.

21 THE COURT: Let's take our mid afternoon recess.  
22 We'll recess for 15 minutes.

23 MR. COLLINS: Yes, Your Honor.

24 THE COURT: Before we do I just want to say a  
25 couple of quick things, I forgot what I was going to  
26 say. You're going to also tell me or you're going to  
27 show Mr. Collins between now and next time what the

1 expenses are for the children over the years average,  
2 you know, so we can discuss that.

3 MR. NOWACKI: Yes.

4 THE COURT: And I don't want to tell you what  
5 you're going to say because I don't what you're going  
6 to say. But, I mean, you're going to cover the other  
7 expenses that you want shared we didn't talk about  
8 that.

9 MR. NOWACKI: I'm just going to make reference  
10 to that.

11 THE COURT: No, all right.

12 MR. COLLINS: Well, so I understand, Your Honor,  
13 because I'm not sure if I am clear.

14 Is the Court's understanding that we're not just  
15 dealing with the Schedule B apportionments?

16 THE COURT: Yes, I think so. I was just going  
17 to raise that, by the way. Yes. Because we may as  
18 well settle it all now as oppose to letting him come  
19 back after all this.

20 Is there any prohibition in the agreement that  
21 indicates you can't ask when you're seeking a  
22 modification if you reach the threshold that you  
23 can't ask for contributions of other expenses?

24 MR. COLLINS: Not to my knowledge, Your Honor.

25 THE COURT: No, I don't think so. So we can  
26 talk about it.

27 Also I think you to discuss with your client if

1           they want to address the issue of prep school now as  
2           part of this hearing. I don't mean this minute, but,  
3           you know. If both people feel that their son wants  
4           to go to prep school and is going to go to prep  
5           school next year, do we have to discuss it?

6           MR. COLLINS: Well, Your Honor, I think Mr.  
7           Nowacki's position is clear on that. The only  
8           problem I face with that is to question as to whether  
9           or not there will be linkage with the application to  
10          modify the college obligation.

11          THE COURT: Well, Mr. Nowacki said it was  
12          important in his overall planning about college,  
13          that's what his feeling is.

14          MR. COLLINS: Right. So I think we're premature  
15          on the college question.

16          THE COURT: Well, there's an argument to made  
17          for that. We'll talk about that when we get to it.  
18          Only because so many things can happen between now  
19          and when your son Tim wants to go to college.

20          So but I don't understand your question?

21          MR. COLLINS: Well, my question is this --

22          THE COURT: Are you going to say if I say X  
23          percent and X percent and Y percent that it's going  
24          to hold for college too, is that what you mean?

25          MR. COLLINS: No.

26          THE COURT: What do you mean?

27          MR. COLLINS: What Mr. Nowacki's position has

1           been is that if he has to contribute X percent to  
2           private school, which he's not adverse to.

3           THE COURT:   Right.

4           MR. COLLINS:  Nor is Ms. Sullivan.

5           THE COURT:  That's what I understand.

6           MR. COLLINS:  But what necessarily must follow  
7           is that the apportionment for college has to be  
8           changed now, because he can't do that he claims and  
9           still be on the hook for 65/35 four years from now.

10          THE COURT:  Well, that's another way of saying  
11          what I think I just said, maybe not.

12          MR. COLLINS:  Perhaps, Your Honor.  He's saying  
13          you have to call the question now, if you're going to  
14          do the private school now.  We don't agree with that.

15          THE COURT:  All right.  Last thing, take few  
16          minutes now and you and Mr. Nowacki see Mr. Diamond  
17          about the next date to continue this hearing.

18          MR. COLLINS:  Sure.

19          THE COURT:  We're going to take a recess.  We're  
20          going to continue to 4:30.

21          MR. COLLINS:  Yes, Your Honor.

22          MR. NOWACKI:  I thought we were scheduled for  
23          Thursday and Friday?

24          THE COURT:  I don't work on Fridays.

25          MR. NOWACKI:  Oh, I'm sorry.

26          THE COURT:  I don't work on Monday's and  
27          Fridays.  See when you get old you get that --

1 MR. NOWACKI: No. Well, I'm not that far behind  
2 you.

3 THE COURT: No. Yes, you are. You're a  
4 youngster. But any way go talk to him.

5 MR. COLLINS: Yes, Your Honor.

6 THE COURT: And we'll take a 15 minute recess.

7 MR. COLLINS: Yes, Your Honor.

8 (A recess was taken, and court was reconvened.)

9 THE COURT: Okay. All right. Go ahead.  
10 September 30, 10:30.

11 MR. COLLINS: Yes, it is, Your Honor. Thank  
12 you.

13 THE COURT: Go ahead, Mr. Nowacki.

14 MR. NOWACKI: Your Honor, the question would be  
15 the shared expenses annually.

16 THE COURT: Annual expenses, okay.

17 MR. NOWACKI: I can give those to you in the  
18 bottom line of the annual.

19 THE COURT: Go ahead.

20 MR. NOWACKI: In 2006 \$57,026.

21 THE COURT: Fifty-seven zero two six.

22 MR. NOWACKI: Right.

23 THE COURT: And that's everything on Schedule B  
24 that we're talking about.

25 MR. NOWACKI: That's correct. Everything that  
26 was included in our reconciliations.

27 THE COURT: All right. Go ahead.

1           MR. NOWACKI: In 2007 we have shared expenses of  
2           \$59,445.

3           THE COURT: Fifty-nine thousand four forty-five.  
4           And 2008?

5           MR. NOWACKI: In 2008 we have... That's in the  
6           motion I don't have that on this page.

7           THE COURT: All right. You can give me that  
8           next week if you don't have it.

9           MR. NOWACKI: No, I do have it. It's just not  
10          on the chart where I thought it was. It's sixty-two  
11          thousand and change. I can do it by quarter.  
12          February was 15,317. I'd rather give that to you --

13          THE COURT: All right. You might also do 2009  
14          at least for the six months, if you can do that?

15          MR. NOWACKI: Yes, I do. Well, actually, we  
16          don't have that because there was a dispute that I  
17          sent a note to Mr. Collins about this morning to try  
18          and resolve that.

19          THE COURT: And just out of curiosity, is the  
20          Nanny 85-90 percent of that?

21          MR. NOWACKI: No. You'd be surprised at how  
22          much hockey costs, Your Honor.

23          MR. COLLINS: Your Honor, that was going to be -  
24          - we have a Nanny problem right now. I'm going to  
25          get into it on cross-examination.

26          THE COURT: All right.

27          MR. COLLINS: But we have a Nanny issue.

1           THE COURT: All right. It's called Nanny-gate.  
2 All right. Go ahead.

3           MR. NOWACKI: It's around \$12,000. But I'll  
4 have that for you next time.

5           THE COURT: Okay. Fine. We'll refer that to  
6 next time. All right. Go on.

7           MR. NOWACKI: We're moving on to the next issue?

8           THE COURT: Yes, go ahead.

9           MR. NOWACKI: Your Honor asked expenses that are  
10 for the children that are not necessarily in the  
11 agreement.

12          THE COURT: Okay.

13          MR. NOWACKI: Let me get my notes on that. All  
14 right. What's not included are vacations, food,  
15 clothing, gifts, entertainment, whatever the kids  
16 spend (indiscernible).

17          THE COURT: So you want to include those in the  
18 future or is that --

19          MR. NOWACKI: No. I'm not, no. I'm just  
20 pointing out that there's significant expenses over  
21 and above those that we reported to. That gives you  
22 an idea that there's a lot more money being spent on  
23 these children than what's reflected in just the  
24 quarterly records.

25          THE COURT: No, I understand that. Are there  
26 any other expenses that you want to include to be  
27 shared other than --



1           MR. NOWACKI: No. I think that the current  
2           system works fine. Not perfectly, but life's not  
3           perfect.

4           MR. NOWACKI: Okay. So that eliminates that  
5           problem. Okay. That's fine. But what you're bring  
6           to my attention is that you each have substantial  
7           expenses for the children over and above \$5,000 a  
8           month that \$60,000 a year seems to cover it, seems to  
9           include.

10          MR. NOWACKI: Yes.

11          THE COURT: Okay.

12          MR. NOWACKI: Hockey is not cheap. Hockey is  
13          about 12 to 15 thousand number on that total.

14          THE COURT: Really?

15          MR. NOWACKI: Yes. Travel expenses. It's a big  
16          number. It's real passion for him, however.

17          THE COURT: Okay.

18          MR. NOWACKI: History on alimony I would like to  
19          cover just from the standpoint --

20          MR. COLLINS: Your Honor, there never was  
21          alimony here.

22          MR. NOWACKI: There was none.

23          MR. COLLINS: Right.

24          MR. NOWACKI: Just the history of how we got  
25          there. Because you made a point in the first  
26          hearing. If we don't need to go over that, then we  
27          can exclude that.

1           THE COURT: I don't really think we have to.  
2           That's up by the boards.

3           MR. NOWACKI: All right. The history on the  
4           split on education. We sort of have covered this  
5           issue, but, you know, I did find notes from my  
6           recollection of the meeting with Mr. Colin. And --

7           THE COURT: Education to include what?

8           MR. NOWACKI: All right. Of how we came to the  
9           65/35 and pulling off the cap. And how that related  
10          to equitable distribution.

11          THE COURT: But you're saying reference to  
12          education that's what I thought you said?

13          MR. NOWACKI: Yes. Yes.

14          THE COURT: Well, what are you sharing by  
15          education?

16          MR. NOWACKI: Well, Mr. Colin seemed to be fuzzy  
17          when his recollections of how we go to, which was the  
18          subject that was raised by his appearance this  
19          morning. And I want to address very specifically  
20          what was part of that discussion.

21          THE COURT: And how it pertains to education?

22          MR. NOWACKI: Yes.

23          THE COURT: All right. Go ahead. Let's hear  
24          what you have to say.

25          MR. NOWACKI: All right. And we've already sort  
26          of a talked about this at the beginning in regards  
27          to, you know, the view that they didn't want the

1 children's education to be compromised in any way by  
2 virtue of the divorce.

3 THE COURT: Right.

4 MR. NOWACKI: So, you know, where the incomes of  
5 where the parties were at that point in time, I think  
6 I would have been terribly unfair to the children to  
7 not have given them the full benefit of private  
8 school education. And that how we got there was an  
9 analysis that I did which is a cost benefit analysis.

10 So I'm saying if we didn't settle the case at  
11 that point in time what happens? The Judge is going  
12 to make a ruling that says that the cap is the cap  
13 and that's all he can do.

14 THE COURT: You're talking about college?

15 MR. NOWACKI: Yes, about college.

16 THE COURT: Because you said, I thought you said  
17 prep school.

18 MR. NOWACKI: But the subject of prep school at  
19 the point in time that we made the agreement was not  
20 on the radar screen.

21 THE COURT: Okay.

22 MR. NOWACKI: So that's a post divorce subject  
23 matter that came because Tim at that point in time  
24 was young. And, you know, he's written to both of us  
25 to talk about why he wants to go prep school, and  
26 they're all the right reasons.

27 THE COURT: Okay.

1           MR. NOWACKI: So I think we're in agreement that  
2           we'd like to be able to provide that provided we can  
3           work out an adjustment which is necessary because of  
4           the decline in my income is significant in the last  
5           two years. So that's changed the dynamic of the need  
6           for the change in the modifications. And it's  
7           changed the need to explore the change in education  
8           in order to be able make the prep school decision.  
9           And Tim is well aware of, you know, the cost.

10          THE COURT: So --

11          MR. NOWACKI: Because it's like adding two more  
12          years to college.

13          THE COURT: Excuse me, so are you saying, and  
14          I'm not trying to put words in your mouth I'm trying  
15          to understand what you're saying. Are you saying, if  
16          there is an adjustment in the 65/35 formula to some  
17          other number that gives you what you perceive to need  
18          so relief that that same percentage would be applied  
19          to prep school, is that what you're saying? Because  
20          you'd have less expenses yourself?

21          MR. NOWACKI: Well, I want to say, and this gets  
22          into --

23          THE COURT: I'm just trying to understand --

24          MR. NOWACKI: -- the hypothetical is until you  
25          see the numbers as to what the Court decides it makes  
26          it very difficult to commit to the prep school  
27          discussion. But we've talked -- you know, my feeling

1 is it should be whatever we decide on the base of the  
2 college education -- in other words, my view of is a  
3 proposal for consideration was to take the, at the  
4 point in time Tim goes to college, we take the  
5 Connecticut State College formula whatever is on the  
6 website.

7 THE COURT: Which is whatever UConn is charging.

8 MR. NOWACKI: Whatever UConn charges.

9 THE COURT: Yes.

10 MR. NOWACKI: And we split that based upon  
11 whatever Your Honor determines the percentages to be  
12 on the new expenses. So if it's a \$100,000, just to  
13 make it out, and then the old formula would have been  
14 65/35.

15 THE COURT: Right.

16 MR. NOWACKI: And Your Honor decided on 55 for  
17 the plaintiff and 45 for the defendant, then we would  
18 split the first \$100,000 55/45. And then I would  
19 assume the responsibility for the original agreement  
20 of 65/35 (indiscernible). Which would provide me  
21 with one year's worth of equivalent relief from the  
22 original numbers to be able to afford prep school.

23 THE COURT: The 55/45 would be?

24 MR. NOWACKI: Fifty-five for the plaintiff --

25 THE COURT: I understand that. But it would be  
26 applied to what?

27 MR. NOWACKI: To the Connecticut cap.

1 THE COURT: Well, Connecticut gets 20,000 now  
2 around.

3 MR. NOWACKI: Right. So we said it would be a  
4 hundred. So if it was just --

5 THE COURT: You used hundred as a hypothetical.

6 MR. NOWACKI: A hypothetical.

7 THE COURT: So you're saying for one year would  
8 be that percentage, is that what you said?

9 MR. NOWACKI: No, no. For the four years.

10 THE COURT: Oh, for the four years.

11 MR. NOWACKI: For the four years we can take  
12 that and say that that's a \$100,000 over four years.  
13 Sixty-five percent of that would have been mind.

14 THE COURT: I understand that part of it. Okay.  
15 Using Connecticut cap, but if your son goes to Boston  
16 University it might be \$200,000.

17 MR. NOWACKI: Right.

18 THE COURT: And you pay 65 percent of the second  
19 \$100,000, is that what you're saying?

20 MR. NOWACKI: That's correct.

21 THE COURT: That's what you're proposing?

22 MR. NOWACKI: That's what I'm proposing. And I  
23 think that that's where the Court would have netted  
24 out in the context of a discussion if the Court was  
25 involved in that process at the point in time.  
26 Because the educational orders are modifiable.

27 THE COURT: Well, that's the point. Is it your

1 position if it's not tied with consideration now of  
2 the UConn order, what do you want to do about prep  
3 school if it's not?

4 MR. NOWACKI: It's simply not affordable to me  
5 based upon the decline in the income, the state of  
6 the economy. I mean, things have changed for  
7 everybody.

8 THE COURT: You mean if it were changed to what?  
9 For sake of discussion you only had to pay 40  
10 percent, I'm making this up.

11 MR. NOWACKI: If it was the original 65/35?

12 THE COURT: No. If we got change to 40 percent  
13 you have to pay, I'm making this up. What does that  
14 mean as far as you're concerned? For prep school?

15 MR. NOWACKI: I'd have to look at the number and  
16 say, can I afford that? You know, it's sort of  
17 looking out at what you're income is going to be, and  
18 I can't project that what it is today.

19 And, you know, the other thing that's happened  
20 to everybody, Your Honor, and this not a problem that  
21 is unique to me, is the reduction in the 529 plan.

22 THE COURT: Tell me about it. The point is, the  
23 point is...

24 MR. NOWACKI: If --

25 THE COURT: Look, you just said a minute ago,  
26 it's modifiable. So even if you got what you wanted  
27 to now, four years from now if you couldn't work or

1           your wife couldn't work for some reason or other,  
2           your former wife, wouldn't the formula have to be  
3           changed? Sure.

4           MR. NOWACKI: In theory, true.

5           THE COURT: Sure.

6           MR. NOWACKI: But I made a proposal to them that  
7           it would be a non-modifiable. That's what I  
8           proposed.

9           THE COURT: Oh, a non-modifiable order?

10          MR. NOWACKI: That's what I proposed to settle  
11          to this, and I can't get anybody to return the call.

12          THE COURT: Well, I'm listening to you. But --  
13          okay.

14          MR. NOWACKI: I suggested -- at Your Honor's  
15          suggestion, I took up Your Honor's suggestion, I  
16          contacted Attorney Collins this week to say that I  
17          would submit to binding arbitration on the subject.  
18          (Indiscernible). Because I think we'd net out a  
19          better place than what the Court can decide.

20          THE COURT: You know, actually -- Mr. Collins is  
21          not listening, so I'll wait until he listens. You  
22          weren't listening.

23          MR. COLLINS: Well, I --

24          THE COURT: Listen, just let me talk. The  
25          separation agree said that these folks were supposed  
26          to go to arbitration before they came to court. If  
27          you want to read the whole agreement.



1 MR. NOWACKI: Yes, but Laci resigned.

2 THE COURT: Well, then get somebody else.

3 MR. NOWACKI: Right. That's what I said when  
4 Laci resigned. Because I felt like he was stepping  
5 aside at an inopportune time.

6 THE COURT: I might throw in a few bucks if you  
7 go to arbitration.

8 MR. NOWACKI: I offered that opportunity. I  
9 believe, that earnestly that we should be able to  
10 resolve our differences, and we shouldn't be here.  
11 How's that?

12 THE COURT: I like that. But we're past that  
13 now.

14 MR. COLLINS: Your Honor, I haven't read it  
15 through again, but I thought that was only with  
16 regard to child related issues.

17 THE COURT: Well, what are we talking about?

18 MR. COLLINS: Well.

19 THE COURT: Child support.

20 MR. COLLINS: Well, okay.

21 THE COURT: Be that as it may.

22 MR. COLLINS: I mean, I --

23 THE COURT: We're past that, Mr. Collins.

24 MR. NOWACKI: If I got a modification of the  
25 base cost of UConn that would make it affordable.  
26 Along with a presumed modification on the base  
27 expenses based upon the decline of income.

1           THE COURT: I understand what you're saying.  
2           It's not my job to sit here and negotiate with you  
3           here today. So is it correct say that if you don't  
4           get the assurance -- if you can get the assurance  
5           about a college non-modifiable agreement now that you  
6           might not be agreeable to prep school?

7           MR. NOWACKI: It might not be affordable. I  
8           mean, if my income is down what it's going to be down  
9           it's going to be that way for a couple of years.

10          THE COURT: Okay.

11          MR. NOWACKI: And the markets don't recover and  
12          the 529's don't recover, I mean, you know.

13          THE COURT: I understand.

14          MR. NOWACKI: I was well on target to be able to  
15          provide for my obligations.

16          THE COURT: All right. Let me just write this  
17          down, and then we'll go on.

18          MR. NOWACKI: Your Honor, I might according to  
19          the financial affidavit for Suzanne there has only  
20          been \$6,000 set aside after this period of time for  
21          each of the children in her 529.

22          THE COURT: Okay. I just wanted to write down  
23          what your proposal was so I could review it.

24          Do you want to talk about something else now?

25          MR. NOWACKI: Life insurance, again, that's an  
26          area that was distributed based upon the income at  
27          the time of the agreement. And I'm not saying that I

1           would reduce mine necessarily, but I certainly would  
2           like to have the option to do so, because a couple of  
3           my variable life policies have now gotten very  
4           expensive.

5           THE COURT: Well, you want to reduce or  
6           increase?

7           MR. NOWACKI: I want to reduce mine and have her  
8           increased to be consistent with what the original  
9           agreement was.

10          THE COURT: Which was what?

11          MR. NOWACKI: Two thirds one third.

12          THE COURT: Isn't that what it is now?

13          MR. NOWACKI: That's what it is now.

14          THE COURT: I see, the percentage that we change  
15          it you --

16          MR. NOWACKI: In other words, if we say it's a  
17          million and a half is what the number is, we switch  
18          to whatever the percentages are that apply the rest  
19          of the adjustments that we're making here on Schedule  
20          B.

21          THE COURT: Now, is that the same request that  
22          you're making for disability? Or do you want the  
23          disability to be increased?

24          MR. NOWACKI: No. Disability was to be  
25          increased so that it would cover both our base  
26          salaries and commission bonuses, because that  
27          represents a big percentage of each of our incomes.

1 And if either one of got disabled for whatever  
2 reason, and I'm more likely to get disabled than  
3 Suzanne is. If I have to come back here I will be.

4 You know, that would result in a modification  
5 situation which I think can be prevented. So I'm  
6 trying to think out to what could happen to address  
7 that and make it fair and equitable. And as I  
8 mentioned our company has the ability to be able to  
9 buy that additional disability insurance. Which if  
10 you read the agreement, there's a technical like  
11 responsibility for me to do that if the employer does  
12 it. And that puts an unfair burden on me because  
13 perhaps her employer doesn't do that. I have not  
14 been able to ascertain that.

15 THE COURT: Okay. Is there anything else that  
16 you want to cover?

17 MR. NOWACKI: Yes. I want to just touch upon,  
18 you know, a subject that's, you know, not in her  
19 financial affidavit that's part of the income tax  
20 analysis here, and it relates to the decline in the  
21 income of David Barrington in the context of their  
22 household income. And, I believe, that, you know,  
23 what it was two years ago versus today, I'm just  
24 saying when I look at the numbers on the tax returns,  
25 I understand what the dilemma is in the decline of  
26 his income which then affects the impact of Suzanne's  
27 income going up and his income going down.

1           THE COURT:   Meaning what as far as you're  
2           concerned?

3           MR. NOWACKI:   Meaning that that's where the rub  
4           here in the road in terms of making all these  
5           adjustments --

6           THE COURT:   I see.

7           MR. NOWACKI:   --and why I'm running into  
8           resistance --

9           THE COURT:   I see.

10          MR. NOWACKI:   -- of coming up with a resolution.  
11          And when you look at the total of what the decline in  
12          his income is it's a factor in their debt service  
13          about what their financial assumptions were when they  
14          got married.   And that's a factor that's impacting  
15          the situation here.   And I've looked at the bank  
16          statements and they move income both ways, mostly  
17          from Suzanne's account into the joint account.   So  
18          there's commingling of assets.   And, you know, I've  
19          review Uncleback(ph) and McNarry(ph) decision.   And,  
20          certainly --

21          MR. COLLINS:   And, of course, Iezzi(ph).

22          THE COURT:   What?

23          MR. COLLINS:   And, of course, the Iezzi decision  
24          which kind of supersedes Uncleback, but I haven't  
25          heard mention of that.

26          THE COURT:   Finish what you want to say.

27          MR. NOWACKI:   I'm just raising the subject of

1           that there's another source of income that's not  
2           reported here in the moving of assets back and forth  
3           between the two base accounts for which the bills and  
4           the children's expenses are paid.

5           THE COURT:   Okay.  Anything else?

6           MR. NOWACKI:  Healthcare insurance.

7           THE COURT:  Healthcare?

8           MR. NOWACKI:  Healthcare insurance has been a  
9           topic of some dispute recently because the agreement  
10          calls for us to choose the cheapest healthcare  
11          insurance for the children.  And what I discovered in  
12          the financial affidavit filed in November 2008 by Tom  
13          Colin, that's the first time I became aware that  
14          David Barrington was on the same healthcare plan as  
15          Suzanne and the children.

16          And that the healthcare plan -- the agreement,  
17          basically, says, that you must choose the cheaper of  
18          the two plans.

19          THE COURT:  Each one?  I don't understand.

20          MR. NOWACKI:  In other words, the children are  
21          currently underneath Suzanne's plan.  We --

22          THE COURT:  Cheaper between you and her.

23          MR. NOWACKI:  Right.  Because what we did when  
24          Carrie need orthodontic work, and this is why it is  
25          important to continue to have the structure of the  
26          agreement for approved expenses, because let's take  
27          orthodontics as a great example for Carrie.  You

1 know, we ran into a situation where we were right at  
2 the window of having to declare next year's  
3 healthcare plan. We discovered through conversation,  
4 because I asked the question, if we moved Carrie to  
5 your plan are there unused benefits on your maximum  
6 cap because Carrie had gotten taloid(ph) spanders(ph)  
7 on my plan and I was at the end of my life time cap.

8 And that's why it's important that we continue  
9 to talk about and make these expenses as efficient as  
10 possible. Because the differential in that  
11 orthodontics care by using pre-tax money and by using  
12 the plan saved us over \$5,000 on what the projected  
13 cost was going to be if we went to the first provider  
14 that Suzanne had an appointment set up with.

15 And that I maintain it's not an extraordinary  
16 burden to anyone to try to find a way to do it most  
17 efficient as parents so that particularly when I was  
18 bearing 65 percent of the cost. One of the real  
19 strengths here in the situation was rising up  
20 expenses to cause for an unfair distribution of the  
21 increased expenses. And that is a source of  
22 contention. And I think it's important that we try  
23 to do thing efficiently and cooperatively. And,  
24 yeah, if that means I want to go do the work for him,  
25 which I volunteer to do all the time. You know, I  
26 buy things on sale. I mean, it's a different  
27 approach because of the affordability particularly

1 the changing income. And I have to be sensitive to  
2 the fact that I've got X number of working years left  
3 here as well, so that I'm not a burden on our  
4 children. I get out of here sooner than she does in  
5 terms of our work life.

6 The last thing I want to talk about is 12  
7 factors that the Court could have considered that are  
8 still in operation here in regards to health and age.  
9 All those factors are still in play. I trust in the  
10 Court's decision. And I just point out that there's  
11 a significant difference in the ages between us.  
12 Suzanne is 42, sorry I said 46 before. She may have  
13 aged four years in the last two years.

14 THE COURT: Last two days.

15 MR. NOWACKI: Yes. And I just want to make sure  
16 that those points are re-enforced as part of my  
17 deliberation to the Court.

18 THE COURT: All right. Thank you.

19 MR. NOWACKI: I wanted to put this Chase  
20 document on fees.

21 MR. COLLINS: I don't know what it is. May I  
22 approach?

23 THE COURT: Sure.

24 MR. NOWACKI: Yes, please.

25 MR. COLLINS: And while I'm looking at this,  
26 Your Honor, can I ask Mr. Nowacki to make his claim?

27 THE COURT: Oh, yes. Why do you want to put it



1 in that's what he wants to know?

2 MR. NOWACKI: It deals with the subject of wire  
3 transfers and V structures and everything else that  
4 relates to decisions that the Court can have in its  
5 files based on whatever decision the Court comes to.

6 MR. COLLINS: Objection, Your Honor.  
7 Irrelevant.

8 THE COURT: It may be marked for identification.

9 MR. COLLINS: Okay. Thank you.

10 (Exhibit 18, was marked for identification  
11 only.)

12 THE COURT: Is that it?

13 MR. NOWACKI: The last thing I just want to  
14 address there's a question that came up about what  
15 SWF stood for in regards to wire transfer that was  
16 put onto the court record. That stands for the  
17 Society of Worldwide Interbank Financial  
18 Telecommunication called SWIFT. And what it is is  
19 SWIFT is a cooperative society under Belgium law. It  
20 is owned by its member financial institutions. SWIFT  
21 has offices around the world. Its headquarters are  
22 located La Hulpe, Belgium, near Brussels. An average  
23 of 2.4 million messages with an aggregate value of 2  
24 trillion dollars are processed by SWFT every single  
25 day. It was found in Brussels in 1973. It's  
26 supported by 239 banks in 15 countries. It started  
27 to establish common standards for financial

1 transactions and a shared data processing of  
2 worldwide communications network. And that their  
3 offices were SWIFT in the United States among 15  
4 other countries.

5 THE COURT: Thank you. Have you concluded your  
6 testimony?

7 MR. NOWACKI: Yes, Your Honor.

8 THE COURT: Well, we're not going to start the  
9 cross-examination today.

10 MR. COLLINS: I would hope not, Your Honor.

11 THE COURT: Just a couple of things before we  
12 break. As I said we'll resume Wednesday. Oh, I know  
13 what I wanted to ask, we'll resume Wednesday at  
14 10:30. Do you have any other witnesses that you're  
15 going to call on your side of the case? You want to  
16 think about it?

17 MR. NOWACKI: Not for the --

18 THE COURT: We're talking only for the  
19 financial.

20 MR. NOWACKI: Yes, for the financial issues.  
21 No, Your Honor.

22 THE COURT: Who are you going to put on if any?

23 MR. COLLINS: Your Honor, solely on the  
24 modification I may have nothing. I just may have  
25 some cross.

26 THE COURT: Okay.

27 MR. COLLINS: However, I think we're going to

1           jump to Mr. Nowacki's motion for contempt next I  
2           would presume. And I have a motion for modification  
3           as well of the current child support arrangement.

4           THE COURT: Is that something you recently  
5           filed?

6           MR. COLLINS: No, Your Honor. It's been out  
7           there for a long time. I also have a motion for  
8           contempt also with regard to the truing up and so  
9           forth.

10          Now, Mr. Nowacki yesterday or so sent me a  
11          reconciliation that was for May. I forwarded that to  
12          Ms. Sullivan, I don't know what her response is. I  
13          wouldn't know how to do that any way. So I don't  
14          know if that's going to moot out that or not, and I  
15          don't even know what percentage he used because --

16          THE COURT: Well, what's your motion --

17          MR. NOWACKI: Sixty-five/35

18          MR. COLLINS: My motion for contempt is that --

19          THE COURT: No, no, not that. The other motion  
20          for child support arrangement?

21          MR. COLLINS: Your Honor, this arrangement just  
22          doesn't work.

23          THE COURT: So what were you --

24          MR. COLLINS: The whole truing up thing. I  
25          mean, I think we have to, we have to --

26          THE COURT: I see you want to modify the system  
27          of truing up.

1 MR. COLLINS: Yes. Right.

2 MR. NOWACKI: But that motion isn't part of this  
3 hearing.

4 THE COURT: No, no, he's just telling me about -  
5 - no, he knows that. He's giving me an agenda what  
6 he's got filed in the works.

7 MR. COLLINS: Right.

8 MR. NOWACKI: I just want to make sure he's not  
9 going to try to push that into this conversation in  
10 regards to this hearing.

11 MR. COLLINS: Well, after we finish Mr.  
12 Nowacki's motions, my question is, is that before  
13 Your Honor? They run along the same lines or are the  
14 before some other Judge and we'll be here on short  
15 calendar on a bunch of Mondays. To me they're  
16 related.

17 I've got a motion pending, for example, for  
18 modification of custody.

19 THE COURT: I know.

20 MR. COLLINS: But that's not before Your Honor.

21 THE COURT: That's what you said last time.

22 MR. COLLINS: Right. And that's not before Your  
23 Honor. And Attorney Rush has to be heard on the  
24 issue of the psych evaluations in this case.

25 THE COURT: Well, wouldn't your motion about  
26 arrangement for changing the true up system be  
27 dependant on where go on the motion for modification

1 of custody?

2 MR. COLLINS: It could. I mean, because the  
3 point is is that on some level joint legal here is  
4 not working.

5 THE COURT: Well, let's take it step by step.  
6 We got to finish this motion. And we've got to  
7 finish the motion for contempt mister has filed. And  
8 at that point time a decision will be made by the  
9 presiding judge or me or somebody if I hear those  
10 additional motions that you're talking about.

11 But they don't really -- they sort of work  
12 together with this. But the issue if the percentage  
13 should change or not wouldn't impact on your motion  
14 to modify the true up system, would it?

15 MR. COLLINS: No, but --

16 THE COURT: Because what you to do is setup a  
17 different way to do it other than a true up.

18 MR. COLLINS: That's correct, Your Honor. It  
19 wouldn't necessarily impact on that.

20 THE COURT: So we'll cross that bridge when we  
21 get to it.

22 MR. COLLINS: Okay. That was really just my  
23 point.

24 THE COURT: There's one other thing. I just  
25 want to give you some homework, you.

26 MR. COLLINS: Yes, Your Honor.

27 THE COURT: An issue has been raised in these

1           hearings that a consideration should entered into my  
2           decision on whether to change the percentages based  
3           on the fact that your client gave up something to get  
4           that percentage originally.

5           MR. COLLINS: Yes, Your Honor.

6           THE COURT: Is there any case law in Connecticut  
7           that says in modifying child support that that's a  
8           consideration?

9           MR. COLLINS: Well, I think this, I don't know  
10          that there's specific case law on it with regard to  
11          child support.

12          THE COURT: That's what we're talking about.

13          MR. COLLINS: And I'll do my research. However,  
14          a separation agreement is not separate and apart from  
15          contract law. And so it's a question of  
16          consideration. And so the issue is if consideration  
17          is given and then you can change one element,  
18          because, you know, as we all know a separation  
19          agreement is kind of an odd or hybrid contract.

20          THE COURT: No. The law is clear a judgment by  
21          stipulation is to be treated as a contract law as far  
22          as interpreting is concerned that's clear.

23          MR. COLLINS: Yes. But my position is that that  
24          the whole concept of consideration is --

25          THE COURT: But how does that -- and I don't  
26          mean to interrupt you, but I hear you. What you're  
27          saying is if it's bargain for consideration it should

1           be considered. But you're dealing with child support  
2           you can't --

3           MR. COLLINS: Can't make it non-modifiable. I  
4           understand that. Well, that's just a factor in this  
5           case. I mean, that's part of the -- there's other  
6           factors which I'll argue before Your Honor. But I'll  
7           look.

8           THE COURT: If you can get some law, it would be  
9           helpful.

10          MR. COLLINS: Yes, Your Honor.

11          THE COURT: The other part of it is, you said  
12          the other day that one of your arguments was that the  
13          college portion of this agreement was non-modifiable,  
14          are you sticking by that?

15          MR. COLLINS: Well, I am. In no small part,  
16          Your Honor, because in the separation agreement the  
17          language is, that the parties shall pay as follows.  
18          And then, you know, and there's a lot of, a lot of --

19          THE COURT: Just in the college?

20          MR. COLLINS: No, in the college.

21          THE COURT: Just the college alone you mean?

22          MR. COLLINS: Just the college. It says, they  
23          shall pay.

24          THE COURT: So you think that makes it non-  
25          modifiable?

26          MR. COLLINS: I believe, it's mandatory  
27          language, Your Honor, yes.

1           THE COURT: Okay. See if I can think of one  
2 more question before I let you go.

3           I guess that's it, so we'll resume next  
4 Wednesday.

5           MR. COLLINS: Thank you, Your Honor.

6           THE COURT: Court's adjourned.

7           (The hearing was concluded.)  
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FST FA04-0201276S : SUPERIOR COURT  
NOWACKI, SUZANNE : JUDICIAL DISTRICT  
VS. : STAMFORD, CONNECTICUT  
NOWACKI, MICHAEL : SEPTEMBER 24, 2009

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and accurate transcript to the best of my ability of the recorded proceedings of the above referenced case, heard before the Honorable Stanley Novack, Judge, in the Stamford Superior Court, Stamford, Connecticut, on the 24<sup>th</sup> day of September, 2009.

Dated at Stamford, Connecticut this 21<sup>st</sup> day of December 2009.

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Deirdre Clement  
Court Monitor